राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 05 मार्च, 2018 / 14 फाल्गुन, 1939

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 11*th September,* 2017

No. Shram (A) 6-3/2017 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the

publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No	Reference/ Application	Title	Section
1.	Ref. 74/2015	Sh. Subhash Chand *V/s* Senior Executive Engineer, HPSEB, Electrical Division Jubbal District Shimla, H.P.	10
2.	Ref. 65/2014	Sh. Dinesh Kumar *V/s* Principal, DAV Dental college, Tatul, Solan, H.P.	10
3.	Ref. 93/2016	Sh. Sanjeev Kumar V/S The Executive Engineer, IPH, Solan, H.P.	10
4.	Ref. 44/2012	Sh. Lucky Rana & Ors. *V/s* Proprietor/Factory Manager, M/s Ind Swift Ltd. Parwanoo, District Solan, H.P.	10
5.	Ref. 04/2016	Sh. Prem Singh Kanwar *V/s* Senior Executive Engineer, HPSEB, Electrical Division HPSEB District Shimla, H.P.	10
6.	Ref. 72/2015	Smt. Rattan Lal *V/s* The Executive Engineer, HPPWD, Kalpa, District Kinnaur, H.P.	10
7.	Ref. 33/2015	Sh. Rajesh Kumar *V/s* Director of Higher Education, Shimla & Anr.	10
8.	Ref. 49/2017	State HRTC Conductor Union *V/s* The M.D. HRTC, Shimla.	10
9.	Ref. 40/2016	Sh. Prem Singh *V/s* The XEN, HPSEB, Charlie Villa Shimla, H.P.	10
10.	Ref. 39/2016	Sh.Chaman Lal *V/s* The XEN, HPSEB, Charlie Villa Shimla, H.P.	10
11.	Ref. 03/2016	Sh. Ram Chander *V/s* Resient Engineer, Ganvi Power House Division HPSEB, Jeori District Shimla, H.P.	10
12.	Ref. 53/2016	Sh. Hoshiar Singh *V/s* The D.F.O. Shimla.	10
13.	Ref. 28/2016	Sh. Rajeev Kumar *V/s* M/S Super Multicolor Prints Ltd.	10
14.	Ref. 15/2015	Sh. Ram Chander *V/s* M/S Vallabh Stripes, Kala Amb.	10
15.	Ref. 66/2016	Sh. Gian Chand *V/s* The M.D. H.P. State Agriculture Marketing Board, Khalini, Shimla.	10
16.	Ref. 69/2015	Sh. Rattan Singh *V/s* The M/s A&A Moduler Systems, Barotiwala District Solan, H.P.	10

17.	Ref. 112/2016	The President/General Secretary, M/s Su-Kam Power Systems Ltd. Baddi *V/s* The Managing Director, M/S Su-Kam Power Systems Ltd. Baddi District Solan, H.P.	10
18.	Ref. 131/2016	Smt. Chander Kanta Thakur *V/s* Factory Manager M/S Asian Electronices Ltd. Shantialaya Trust, Shimla.	10

By order,
R. D. DHIMAN, IAS
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, SHIMLA

Ref. no. 74 of 2015

Instituted on 3-11-2015

Decided on 29-7-2017

Subhash Chand s/o Shri Diwan Chand, r/o Village Bhadyara, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. . .*Petitioner.*

Versus

The Senior Executive Engineer, H.P.S.E.B. Electrical Division Rohru, Tehsil Rohru, Distt. Shimla, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K Khidtta, Advocate

For respondent : Shri Sudhir Negi, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"**Whether termination of the services of Shri Subhash Chand s/o Sh. Diwan Chand, r/o Village Bhadyara, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. by the Senior Executive engineer, HPSEB Electrical Division Jubbal, Tehsil Rohru, Distt. Shimla, H.P. during July, 1993 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that he was engaged as beldar/worker by the respondent board in the month of September, 1992 in sub-Division Gangtoli and worked continuously till the year, 1996 and that his services were terminated by the respondent without assigning any reason and without complying the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as well as Standing Orders of the HPSEB. It is further stated that the petitioner after his illegal termination, visited the office of the respondent number of times and requested the concerned official to engage him on the same post as the work was available with the Board but of no avail and thereafter he raised the demand notice on 4-12-2009 which was rejected by the Labour Commissioner and thereafter feeling aggrieved, he filed CWP No. 3651/2015 before the Hon'ble High Court in which the Labour Commissioner was directed to consider the case of the petitioner and ultimately the case of the petitioner has been sent as reference to this Court. It is also stated that neither any notice nor compensation in lieu of the notice has been paid to the petitioner by the board before terminating his services which is clear cut violation of section 25-F of the Act and that the petitioner had completed 240 days in a calendar year and the junior persons namely Sushila Kamta, Man Singh, Dhan Singh, Sunder Singh and Puran Chand are still working and the work which the petitioner was performing is still available with the respondent. It is stated that the respondent has also engaged new persons and the petitioner has not been called back and while terminating the services of the petitioner respondent board has violated the provisions of sections 25-F, 25-G, 25-H, 25-N of the Act and section 14 (2) of the Standing Orders of HPSEB. Against this back-drop a prayer has been made that termination of the petitioner from the month of July 1992 be quashed and set aside and the respondent board be directed to reinstate the petitioner in service on the same post *w.e.f.* July 1992 with all consequential service benefits.

3. By filing reply, the respondent contested the claim of the petitioner with the averments that the petitioner was engaged temporarily as daily waged beldar on the specific work and he had worked from 26-9-1992 to 25-7-1993 for 269 days and on the completion of work, he was discharged from duties on 25-7-1993 and on 4-12-2009, he had raised the industrial dispute after a gap of 16 years and that the petitioner had never completed 240 days in each calendar year, hence, he is not entitled to any notice or compensation and also no show cause notice was required as his engagement was purely temporary. It is further averred that no written representation has been made by the petitioner and even his services were never terminated but he was discharged from his duties on the completion of work and funds. It is denied that the juniors were retained and fresh hands were engaged. It is further denied that the services of Sushila Kamta, Man Singh, Dharam Singh, Sunder Singh and Puran Singh were engaged after the discharge of the petitioner. The respondent prayed for the dismissal of the claim petition.

4. By filling rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 27-9-2016.

1. Whether the termination of the services of petitioner during July, 1993 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No.1 No.

Issue No.2 Becomes redundant.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No.1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner were engaged temporarily and his services were never terminated but he was discharged from his duties on the completion of work and funds. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

10. To prove issue No.1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as beldar in September, 1992 and worked as such till 1996 and thereafter his services were terminated by the respondent without any notice and compensation and that too without conducting any enquiry. He further deposed that the respondent had retained his juniors namely Sunder Lal, Sushil Kamta, Man Singh, Dhan Singh, Panna Lal, Puran Chand etc. who are still working with the respondent and their services had been regularized. He also deposed that he had worked for more than 240 days in every calendar year and the work which he was performing is still available with the respondent. He is un-employed after his termination and he was illegally terminated. He deposed further that after his termination he requested for his re-engagement but of no avail and thereafter on 4-12-2009, he raised the demand notice but the Labour Commissioner had rejected his case upon which he approached the High Court by filing CWP No. 3652/2015 which was decided in his favour. The copy of demand notice is Ex.PW-1/A and Ex.PW-1/B is the copy of the order of Hon'ble High Court. In cross examination he admitted that he was engaged on 26-09-1992. He denied that he was engaged for specific work *w.e.f.* 26-9-1992 till 25-7-1993. He further denied that he had not completed 240 days in a calendar year. He also denied that the respondent had not retained his juniors and that the respondent had not engaged new/fresh persons. He denied that he had filed the case after lapse of 22 years and that he had raised the demand notice after a gap of 16 years.

11. PW-2 Shri Kuldeep Singh Senior Executive Engineer has stated that Shri Subhash Chand was engaged on 26-9-1992 in Sub-Division Gangtoli, Rohru and Surinder Singh was engaged on 26-10-1986, Puran Chand was engaged on 26-10-1992, Sunder Lal was engaged on 26-9-1992, Panna Lal was engaged on 26-10-1992 and Ravinder Singh was engaged on 26-11-1992 as beldars and they are still working with the respondent board. He tendered in evidence the copy of standing orders of the Board Ex. PW-2/A. In cross-examination, he stated that the juniors have been retained upon the orders of the Hon'ble High Court mark RX-1 to mark RX-4.

12. PW-3 Smt. Sushila Kamta deposed that initially she was engaged as beldar by the board at Rohru on 20.7.1998 and presently she is working with the board.

13. On the other hand, the respondent examined one Shri Ajay Kumar, Assistant Engineer, as RW-1 who deposed that the petitioner was engaged as daily waged beldar on 26-9-1992 on muster Roll basis and he worked till 25-7-1993 and thereafter he left the job at his own. He further deposed that the petitioner was called telephonically to resume the duties but he never turned up and he raised the demand notice after 16 years and during the intervening period of 16 years, the petitioner never approached the board for his re-instatement. He also deposed that no junior to the petitioner was retained and the persons namely Surinder Singh, Puran Singh, Panna Lal, Goverdhan Singh and Ravinder Singh were initially engaged prior to the petitioner and Sunder Lal was engaged alongwith the petitioner and they have been retained upon the orders of the Court. In cross-examination, he admitted that the petitioner was engaged in September 1992 and that he worked till 25-7-1993. He further admitted that as per extract mark PX, the petitioner had worked for 240 days in 12 calendar months. He also admitted that neither any notice was issued nor any compensation was given to the petitioner prior to his termination and that no letter was issued to him for resumption of his duties and no show cause notice was issued and no enquiry was conducted against him. He denied that the juniors to the petitioner have been retained by the Board. He admitted that Puran Chand and Panna Lal were engaged on 26-10-1992 and Sudner Lal was engaged on 26.9.1992 and that Goverdhan and Ravinder Singh were engaged on 26-11-1992. He admitted that the aforesaid persons are still working with the board. He denied that the services of the petitioner were terminated illegally and he never abandoned the job.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the services of the petitioner were engaged on 26-9-1992 and he worked as such till 25-7-1993. It is also clear from the record that the present dispute was raised by the petitioner after about 16 years. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 16 years. According to the petitioner he was engaged by the respondent in the month of September 1992. It is the admitted case of the petitioner that he raised the demand notice Ex. PW 1/A on 4-12-2009. The perusal of the demand notice Ex. PW-1/A shows that the same was raised by the petitioner after a period of 16 years. Therefore, the position of law in respect of a stale claim is required to be seen.

16. In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota *Vs.* **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the ID Act but

delay in raising industrial dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

17. In Assistant Executive Engineer, Karnataka *Vs.* **Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh Vs. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit Vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. ***In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT 2005 (1) SC 303, and Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. In Balbir Singh *Vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

> 5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *V.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).
>
> 6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka Vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh Vs. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit Vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of

limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases **where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale.** That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. **As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.** When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

19. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. **Babu Ram**, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. In Assistant Engineer, CAD Kota Vs. **Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30% back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

> "9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

21. In **UP State Road Transport Corporation** Vs. **Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15-3-1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> " 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

22. **In (2009) 13 SCC 746, State of Karnataka** Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

23. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of HP. and others decided on 26.10.2016**, it has been held as under:

> "**5. As discussed hereinabove, petitioners have chosen to remain in deep slumber for not less than 8-12 years and have come out of deep slumber after more than 8 to 12 years. While going through the writ petitions, it appears that the petitioners remained contented with the orders of their termination and had not made any murmur for**

making reference. It is only after noticing the judgment of the apex Court in Ajaib Singh versus **Sirhind Cooperative Societies Ltd. reported in AIR 1999 SC 1351, Raghubir Singh** versus **General Manager, Haryana Roadways, Hissar, reported in 2014 AIR SCW 5515, which has been relied upon by this Court in a batch of writ petitions, CWP No. 9467 of 2014 titled as Pratap Chand versus Himachal Pradesh State Electricity Board and others, being the lead case, decided on 30.12.2014 and in so many cases, has set aside the orders and directed the Labour Commissioner to make reference to the Industrial Tribunal, reference of which have been made in all the writ petitions. Thus, one comes to an inescapable conclusion that these writ petitions are only because of the judgment made by the apex Court and the judgments made by this Court, is suggestive of the fact that the petitioners were fence-sitter and watching what will happen to other cases. The petitioners have not made any murmur till the judgments were made by the apex Court and by this Court in so many cases."**

(Emphasis supplied).

6. ……..……

7. ……...……

8. ……..

"9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations is not sufficient to explain the delay.

25. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* the year, 1996 but in support thereof no evidence has been led by the petitioner which could go to show that he had actually worked till the year, 1996. As per the reference the services of the petitioner were stated to be terminated during July 1993 and even RW-1 has categorically deposed that the petitioner had worked till 25-7-1993 therefore, in the absence of any documentary evidence on record, it cannot be said that the services of the petitioner were allegedly terminated in the year, 1996. It is also clear from record that the petitioner had raised the present dispute after about a period of 16 years. In his deposition before this Court the petitioner as PW-1 has stated that after his termination, he requested the respondent for his re-engagement several times but he was not re engaged. However, except for his bald statement there is no other evidence on record to suggest as to when he approached the respondent for his reinstatement. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement

during the period of 16 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 16 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. The learned counsel for the petitioner next contended that the since the petitioner had completed 240 days in a calendar year, it was necessary for the respondent to have complied with the provisions of section 25-F of the Act. It has been admitted by RW-1 that as per the extract mark PX, the petitioner had worked for 240 days in 12 calendar months. No doubt, the petitioner might have completed 240 days in a calendar year or in preceding 12 months but as observed earlier, since, the petitioner has failed to explain the delay of about 16 years in raising the reference, no protection of section 25-F of the Act can be granted to the petitioner at this belated stage.

27. The learned counsel for the petitioner next contended that RW-1 has deposed before this Court that the petitioner has left the job at his own but the respondent has failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondent to lead evidence and to bring witnesses or to place documents on record to prove after 16 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 16 years as the delay in the present case is certainly fatal.

28. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". In his deposition, the petitioner has also stated that after the termination of his services, the respondent has retained his juniors namely Sunder Lal, Sushila Kamta, Man Singh, Dhan Singh, Panna Lal and Puran Chand and they are still working with the department. However, the statement of RW-1 shows that Sunder Lal was engaged on 26-9-1992 alongwith the petitioner and he cannot be stated to be his junior. Furthermore, the persons namely Puran Chand, Panna Lal, Goverdhan Singh and Ravinder Singh were engaged upon the orders of the Court mark RX-1 to mark RX-4. Therefore, the perusal of the aforesaid orders of the Court shows that they have not been engaged by the board itself rather they have been engaged upon the orders of the Court. So far as the engagement of Smt. Sushila Kamta is concerned, she was engaged as beldar by the board at Rohru on 20-7-1998 as per her statement as PW-3. However, no documentary evidence has been produced by the petitioner in order to show her actual date of appointment and whether she had worked continuously at Rohru w.e.f. 20.7.1998 till date. Rather, it is clear from her statement that at present she is working under City Electric Division Shimla and not at Rohru. Even, at the time of her deposition before the Court she had not produced any documentary evidence regarding her appointment with the board. Therefore, in the absence of any documentary evidence on record, it cannot be said that the aforesaid Sushila Kamta was retained/engaged by the board at the same Sub Division where the petitioner was working. Moreover, our own **Hon'ble High Court in CWP no. 4515/2012 decided**

on 13.6.2012, titled as Suraj Mani Vs. **HPSEB** has held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 16 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-F, 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 16 years.

29. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2.

30. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 29th Day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, HP. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA.**

Ref. No. 65 of 2014

Instituted on 13.8.2014

Decided on 31.7.2017

Dinesh Kumar s/o Sh. Hari Ram, Village Kailar & P.O. Saproon, Distt. Solan, H.P.
. .*Petitioner.*

VS.

M.N. DAV Dental College, Tatul, P.O. Oachghat, District Solan, H.P. through its Principal.
. .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, AR

For respondent : Shri Arun Verma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether verbal termination of the services of Shri Dinesh Kumar s/o Shri Hari Ram, r/o Village Kailar, P.O. Saproon, District Solan, H.P. by the Principal, M.N. D.A.V. Dental College, Tatul, P.O. Oachghat, Distt. Solan, H.P. *w.e.f.* 01.04.2013 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to?"

2. In nutshell, the case of the petitioner is that he was engaged as driver to drive the college buses/vehicles since 3-11-2011 and remained continued as such till 1-4-2013 without any break and thereafter he was orally restrained to attend his duties without any legal orders and he was paid wages ₹ 5412/- per month which is less than the minimum wages notified for the category of drivers by the appropriate government, hence, he is entitled to receive difference of wages throughout with interest. It is further stated that the services of the petitioner were terminated without any notice, retrenchment compensation and without necessary compliance of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) and that the oral termination orders of the petitioner are not speaking orders and as such those are null, void and inoperative which amounts to unfair labour practice. The conduct of the petitioner was quite satisfactory as neither he was served with any chargesheet nor any enquiry was conducted against him and even no opportunity of being heard was given to him before terminating his services. It is also stated that the services of junior workmen in the same establishment were retained by the respondent in violation of the provisions of section 25-G of the Act and that the removal of the petitioner from the services of the college is against the provisions of the Employment Standing Orders Act, 1946. Against this back-drop a prayer has been made that the respondent be directed to reinstate the petitioner in the employment of the respondent college, retrospectively *w.e.f.* 1-4-2013 with full back-wages, seniority and other consequential service benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and that the claim is bad for non-joinder of necessary parties etc. On merits, it has been asserted that neither the petitioner was in the employment of the respondent nor at any point of time, wages amounting to ₹ 5412/- had been paid to him. The respondent had annual contract previously with M/s Jai Durga Agency, Solan for providing manpower on various posts including driver and accordingly the aforesaid contractor recruited the petitioner as a driver and was deputed for plying the buses of the respondent. The petitioner remained on the rolls of the contractor, aforesaid, only for three months and thereafter his services were availed by M/s Rab Rakha Security Solan and further deputed him with the respondent. The respondent did not pay any wages/salary or any other benefits to the petitioner directly and the contractor used to disburse wages to him. It is further asserted that as informed by the security agency, the petitioner had resigned from the services of the contractor as he has got better employment opportunity with some other organization at Pawranoo. It is further asserted that the petitioner had submitted his resignation to the contractor wherein he has acknowledged that he had received his entire full and final settlement amount and there are no dues from M/s Rab Rakha Security Service, Solan and even in one letter he had admitted and acknowledged that he was

recruited by M/s Rab Rakha Security Service, Solan to provide services to various agencies including the respondent. It is denied that the services of the petitioner were terminated without any notice and retrenchment compensation and that too without compliance of section 25-F of the Act. Since, the petitioner had submitted his resignation with his employer *i.e.* contractor, hence he is not entitled for statutory benefits as claimed and that since the petitioner was not in the employment of respondent, hence, no notice and chargesheet was required to be issued to him. It is denied that the services of junior workmen in the same establishment were retained by the respondent. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 4.1.2016.

1. Whether the termination of the services of petitioner *w.e.f.* 1-4-2013 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

4. Whether the petition is bad for non-joinder of necessary parties as alleged? . .*OPR.*

5. Relief

6. I have heard the AR for the petitioner and learned counsel for the respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No.

Issue No.2 Becomes redundant

Issue No.3 No.

Issue No.4 Yes.

Relief Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues no.1 & 4 .

8. Being interlinked and correlated both these issues are taken up together for discussion and decision.

9. The AR for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25 F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that before terminating the services of the petitioner neither any enquiry was conducted against him nor he was afforded any opportunity of being heard. He also contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondent contended that the petitioner was the employee of the contractor and he was deputed by the contractor with the respondent for plying the vehicles/buses of the respondent. He further contended that as per the information received from the contractor, the petitioner himself tendered his resignation in which he had acknowledged that he had received his full and final settlement amount and there are no dues from M/s Rab Rakha Security Service, Solan. He also contended that in one letter the petitioner had also admitted and acknowledged that he was recruited by M/s Rab Rakha Security Service Solan and since, he was not the employee of respondent, hence, the question of his termination by the respondent does not arise at all.

11. To prove issue No.1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as driver by the respondent on 3-11-2011 and continued as such till 1-4-2013 and he used to dive the bus of the respondent. The log book of the bus no. HP 14-A-2408 Mark A has been filled by him. He further stated that he had completed 240 days in each calendar year till his termination and neither any notice was issued to him nor any compensation was paid before the termination of his services. He further stated that neither any show cause notice /chargesheet was issued nor any enquiry was conducted against him, and after his termination, the respondent has engaged new driver namely Bala Ram, Jaggu Ram and Nanku Ram. His last drawn salary was about ₹ 5000/- per month. In cross-examination, he denied that he had joined Jai Maa Durga Security Services in the year, 2011-2012 and that the respondent had entered into contract with Jai Maa Durga Security Service for deploying manpower for the year, 2011-12. He further denied that the salary for the year, 2011-12 was being paid by M/s Jai Durga Security Services. He also denied that *w.e.f.* 1-4-2012 to 31-3-2013, M/s R.R. Security Services, Solan had deployed him with the respondent and they had paid the salary to him and that he was under the control of R.R. Security Services. He denied that he submitted his resignation to R.R Security Services on 17-6-2013 and that he had appended his signatures on Mark RX at point A&B encircled in red. He further denied that he had written letter Mark RY to R.R Security and he had appended his signatures on the same. He also denied that since he got another job, therefore, he had left the job on 17-6-2013 from R.R. Security Service. He denied that he was not under the direct control of respondent. He further denied that the services of Bala Ram, Jaggu Ram and Nanku Ram have not been engaged by the respondent.

12. On the other hand, the respondent examined two RWs. RW-1 Shri Inder Kumar, Transport Incharge tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence authority letter Ex. RW-1/B, copy of agreement dated 30-3-2012 Ex. RW-1/C and agreement dated 30-3-2011 Ex. RW-1/D. In cross examination, he admitted that the bus which was used to be driven by the petitioner is still being plied by the college. He further admitted that the respondent does not have any certificate of registration under Contract Labour (Regulation and Abolition) Act. He denied that the work is taken from the workers deployed by the contractor as per the rules and regulations of the college. He further denied that the services of the workers deployed by the contractor are terminated by the Principal of the college. He admitted that the petitioner had not tendered the resignation to the respondent college. He denied that the petitioner was being paid the wages which were less than the wages as per the minimum wages Act. He further denied that the petitioner was under the

administrative control of the college. He admitted that the work of the petitioner was satisfactory and that no person of the contractor used to sit in the college.

13. Shri Sant Ram Sharma, Prop. of R.R. Security Services appeared into the witness box as RW-2 to depose that Ex. RW-2/A is the copy of licence under the Contract Labour (Regulation and Abolition) Act to deploy the contract labour and agreement Ex. RW-1/C had been executed by them with the college and the same is signed by him at point B encircled in red and as per agreement, they have supplied nine workers to the college. He further deposed that the workers including the petitioner were under his supervision and he used to pay him the salary after 1-4-2012 and he used to raise the salary bills of the petitioner and used to give it to the college as per the terms and condition of agreement Ex. RW-1/C. The college used to pay the amount to him through cheques and he used to deposit the EPF of the petitioner. He also deposed that the resignation letter Ex. RW-2/B was given to him by the petitioner and he was paid his full & final dues as per letter Ex. RW-2/C on 17-6-2013. In cross-examination, he admitted that he had not terminated the services of the petitioner. He volunteered that the petitioner had tendered his resignation before him on 17-6-2013. He denied that the petitioner had not signed the letters Ex. RW-2/B and Ex. RW-2/C and the same are fabricated. He further denied that licence Ex. RW-2/A is only for deploying the security staff but admitted that the licence is not valid for deploying the drivers. He also denied that the petitioner was neither under his control and supervision nor he used to mark his attendance. He admitted that he used to receive 20% commission from the college. He further admitted that the log book of the vehicle was maintained by the college.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner has not been able to establish that he was the employee of the respondent college and that his services have been terminated by the respondent in violation of the provisions of the Act. It was for the petitioner to bring on record the cogent and satisfactory evidence regarding his appointment with the respondent. The petitioner, admittedly, has not adduced in evidence any such appointment letter or document to warrant such inference thereby making it evident that he was the employee of the respondent. Except for the bald statement of the petitioner, there is no evidence on record to suggest that he was engaged as driver by the respondent. In cross examination, he admitted that no appointment letter was issued to him by the respondent. He also admitted in cross-examination that he had not annexed any salary slip, extract of attendance register and identity card issued by the respondent. In fact there is no documentary evidence on record which could show that the petitioner was the employee of the respondent.

15. On the other hand, it has been proved on record by the respondent that on 30-3-2011, it had entered into an agreement Ex. RW-1/D with M/s Jai Durga Agency for providing manpower of various posts including drivers and thereafter it had entered into an agreement dated 30-3-2012 Ex. RW-1/C with M/s R.R. Security Services Solan who had provided the services of the petitioner as driver for plying its buses. The name of the petitioner is reflected in the list of workers mark RX supplied against the aforesaid agreement Ex. RW-1/C in which the petitioner had appended his signatures at serial No. 9. RW-2, who is the proprietor of M/s R.R. Security Services has specifically deposed that they have supplied nine workers to the respondent college as per agreement Ex. RW 1/C and the list mark RX has been signed by the petitioner at serial No.9. He further deposed that all the nine workers including the petitioner were under his supervision and he used to pay him the salary after 1-4-2012. He also deposed that he used to raise the salary bills of the petitioner and used to give it to the college as per the terms and conditions of the agreement Ex. RW-1/C. He further deposed that he used to deposit the EPF of the petitioner. No evidence to the contrary has been filed by the petitioner. Hence, the direct evidence in the shape of the aforesaid documents is clinching to substantiate that the petitioner was the worker of the contractor *i.e.* M/s R.R. Security Services and was not engaged by the respondent. Therefore, the relationship of

employer and employee between the petitioner and respondent has not been established. Moreover, it has also been proved on record that the petitioner has tendered his resignation to M/s R.R. Security Services on 17-6-2013 *vide* letter Ex. RW-2/B. RW-2 specifically deposed that the resignation letter Ex. RW-2/B was given to him by the petitioner and the same is signed by the petitioner at point A. He also deposed that the petitioner was paid full & final dues as per letter dated 17-6-2013 Ex. RW-2/C. The perusal of the same shows that the petitioner had signed the same and acknowledged that he had received his full & final dues and there are no dues from the company. Though a suggestion has been put to RW-2 that the petitioner has not signed the letters Ex. RW-2/B and Ex. RW-2/C and the same are fabricated. However, no evidence has been led by the petitioner to prove that the aforesaid letters have been fabricated and the same have not been signed by him and he had not tendered his resignation.

16. Hence, in view of the entire evidence on record, I have no hesitation in holding that the petitioner was the employee of the contractor and he was deputed by the contractor with the respondent for plying the buses of the respondent and thereafter the petitioner himself had tendered his resignation.

17. From the perusal of the record, it has become clear that the petitioner has not impleaded M/s R.R. Security Services, Solan as a party in the statement of claim which has been filed consequent upon the reference having been made to this Court by the appropriate government. The respondent college has taken a specific plea in its reply that the petitioner had been deputed by the contractor M/s R.R. Security Services, Solan. Therefore, since the respondent college through its reply had made known to the petitioner that the contractor had deputed the petitioner with the respondent and in support thereof the respondent had also filed documents, it was incumbent upon the petitioner to have taken necessary steps to get impleaded M/s R.R. Security Services, Solan as a party, even, if initially he has filed his claim only against the respondent college. Therefore, I have no hesitation in holding that the petition is bad for non-joinder of necessary parties.

18. Accordingly both these issues are answered in favour of the respondent and against the petitioner.

Issue No.3.

19. Consequent upon the reference, made to this Court by the appropriate government, the petitioner had filed the claim petition which cannot be said to be not maintainable. Thus, by holding the claim petition to be maintainable, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim petition filed by the petitioner deserves to be dismissed and accordingly, the same is dismissed with the result, this reference is decided against him and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced in the open court today on this 31st day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA.**

Ref. No. 93 of 2016.

Instituted on 3-10-2016.

Decided on 26-7-2017.

Sanjeev Kumar s/o late Shri Shankar Lal r/o Village Bhalori, P.O Kuthar, Tehsil Kasauli, District Solan, H.P. . .*Petitioner.*

Versus

1. State of H.P. through Secretary, I&PH Department.

2. The Executive Engineer, I&PH Division Solan, District Solan, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Ms. Kiran Sharma, Advocate

For respondents : Ms. Reena Chauhan, Dy. DA

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"**Whether alleged termination of services of Sh. Sanjeev Kumar s/o Sh. Shankar Lal r/o Village Bhalori, P.O. Kuthar, Tehsil Kasauli, Distt. Solan, H.P. during October 1995 by the Executive Engineer, I & PH Division Solan (Rabon), Distt. Solan, H.P., who had worked for 263 days & 193 days during the years 1994 & 1995 respectively and has raised his industrial dispute after more than 17 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 263 days & 193 days during the years 1994 & 1995 and delay of more than 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the** above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that in the month of April 1994, he was engaged as daily waged beldar by the respondents and worked continuously till 30-9-1995 and completed 240 days in a calendar year but on 1-10-1995, his services were orally terminated without complying the mandatory provisions of section 25-F, 25-G, 25-H, 25-L and 25-M of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is further stated that after the termination of the services of the petitioner, he made several requests to the respondents but of no avail and that the respondents have retained his juniors without following the procedure of last come first go. It is also stated that during conciliation, the Labour Officer declined to make the reference and thereafter the petitioner filed CWP No 849/2016 before the Hon'ble High Court wherein the Labour Commissioner was directed to make the reference to this Court within a period of six weeks. That the services of the petitioner were terminated without giving any notice and without paying retrenchment compensation and there is a lot of work and funds available with the respondents against which the petitioner could have easily been accommodated and that the action of the

respondents in giving artificial and fictional breaks is illegal. Against this back drop a prayer has been made that the employer be directed to re-engage/reinstate the petitioner in service with all consequential benefits including full back-wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability as the petitioner had left the job at his own and the petition is time barred. On merits, it has been asserted that the petitioner was initially engaged in the department during the month of 04/1994 and worked intermittently up to September 1995 and thereafter he left the job/work on his own and did not turn up for his duties from 1-10-1995. It is further asserted that the petitioner never approached the department for his re engagement. It is denied that the services of the petitioner were orally terminated and that the respondents have retained junior persons and the procedure of last come first go has been violated. Since, the services of the petitioner were never terminated by the respondents, hence, the question of issuance of one months notice does not arise. The respondents prayed for the dismissal of the claim petition.

4. By filling rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 11.4.2017.

1. Whether the termination of the services of petitioner by the respondents during October 1995 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petitioner had left the job at his own as alleged? . .*OPR.*

4. Whether the claim petition is time barred as alleged? . .*OPR.*

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1: No

Issue No.2 : Becomes redundant.

Issue No.3 : Decided accordingly.

Issue No.4 : Yes.

Relief: Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues no.1, 3 & 4 .

8. Being interlinked and correlated, all these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. She further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned Dy. DA for the respondents contended that the claim of the petitioner is highly belated and stale. She further contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even he had not completed 240 days in preceding twelve months. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

11. To prove issue No.1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as beldar by the respondents in the year, 1994 and he worked upto December 1995 and thereafter his services were terminated. He further deposed that neither any notice was issued to him nor any compensation was paid to him prior to his termination. He had also written letter to the respondents and that the Labour Officer had declined to make the reference, hence, he filed CWP No. 849/2016 before the Hon'ble High Court wherein the Labour Commissioner was directed to make the reference. He also stated that he had completed 240 days in the calendar year preceding his termination and the copy of mandays chart Ex. PW-1/A has been issued by Assistant Engineer and after his termination, the respondents have retained the juniors and engaged fresh hands. In cross-examination, he denied that he had worked intermittently between the year, 1994 to 1995 and that he had left the job at his own. He further denied that he had never approached the respondents for his re-engagement and that his services were never terminated by the respondents. He also denied that no juniors were retained and no fresh hands were engaged by the respondents. He admitted that he had raised the industrial dispute after 16 years.

12. On the other hand, the respondents examined one Shri Pramod Gautam, Assistant Engineer, as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the authority letter Ex. RW-1/B and muster-roll No. 422 Mark RX. In cross-examination, he admitted that the petitioner was engaged as beldar in the month of April 1994 and he worked continuously till 30-9-1995. He admitted that the petitioner had completed 240 days in the calendar year of 1994 but denied that fictional breaks were given to him. He denied that the petitioner approached the department for his re-instatement in October 1995 and thereafter also. He admitted that no notice was issued to the petitioner and no compensation was given to him. He denied that juniors to the petitioner have been retained by the respondents and that the services of the petitioner were terminated illegally.

13. RW-2 stated that as per the voucher register Ex. RW-2/A, the work was available with the respondent but the petitioner had not turned up to do job.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 263 day in the year 1994 and 193 days in 1995 with the respondents during the entire period *w.e.f.* 1.4.1994 till 30.9.1995 as per

the mandays chart Ex. PW-1/A. It is also clear from the record that the present dispute was raised by the petitioner after about 17 years. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 17 years. According to the petitioner he was engaged by the respondents in the month of April 1994 and worked as such till 30-9-1995. He has admitted in cross-examination that he had raised the demand notice after about 16 years. Therefore, the position of law in respect of a stale claim is required to be seen.

16. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the ID. Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

17. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *Vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit Vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A

situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. ***In Haryana State Coop. Land Development Bank*** **Vs.** ***Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. **"The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom** Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *V.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 : 1999 SCC (L&S) 1054: JT (1999) 3 SC 38)].

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any

general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka *Vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *Vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *Vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back-wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases **where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale.** That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. **As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.** When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

19. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. **Babu Ram**, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The

Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

> "10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. In Assistant Engineer, CAD Kota Vs. **Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30% back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

> "9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

21. In **UP State Road Transport Corporation** Vs. **Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15-3-1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> " 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

22. **In (2009) 13 SCC 746, State of Karnataka** Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising

could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

23. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of H.P. and others decided on 26-10-2016**, it has been held as under:

> "9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations is not sufficient to explain the delay.

25. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* 30-9-1995 and he raised the present dispute after about a period of 17 years. In his deposition before this Court the petitioner as PW-1 has stated that he approached the respondents after one week and thereafter also but he was not reinstated. However, except for his bald statement there is no other evidence on record to suggest as to when he approached the respondents for his reinstatement. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondents for his re-engagement during the period of 17 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 17 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. The learned counsel for the petitioner next contended that the since the petitioner had completed 240 days in a calendar year, it was necessary for the respondents to have complied with the provisions of section 25-F of the Act. As per the mandays chart Ex. PW-1/A, the petitioner had completed 263 days in the year, 1994 and 193 days in the year, 1995. No doubt, the petitioner might have completed 240 days in a calendar year or in preceding 12 months but as observed earlier, since, the petitioner has failed to explain the delay of about 17 years in raising the reference, no protection of section 25-F of the Act can be granted to the petitioner at this belated stage.

27. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in their reply but they have totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 17 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 17 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 17 years as the delay in the present case is certainly fatal.

28. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors and had engaged fresh hands who are still working as such the respondents had violated the principles of "last come first go". In his deposition, the petitioner has also stated that after the termination of his services, the respondents have retained the juniors and engaged fresh hands. But in support thereof no specific evidence has been led by the petitioner. Moreover, our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani** Vs. **HPSEB** has held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 17 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-F, 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 17 years.

29. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 17 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, all these issues are answered accordingly.

Issue No.2.

30. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 26th Day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)

Application No. 44 of 2012

Instituted on. 1-10-2012

Decided on 28-7-2017

1. Lucky Rana s/o Shri Ramesh Rana.

2. Daljeet Singh s/o Shri Vidhi Chand.

Both c/o Om Dutt Sharma VPO Taksal, Tehsil Kasauli, District Solan, H.P. . .*Petitioners.*

Vs.

Proprietor/Factory Manager Ind Swift Ltd., Plot No. 17-B, Sector-2, Parwanoo, District Solan, H.P. . .*Respondent.*

Claim petition on behalf of the petitioners

For petitioners : Shri Niranjan Verma, Advocate.

For respondent : Shri Upender Sharma, Advocate.

AWARD/ORDER

Briefly, the case of the petitioners is that on 2-1-2006, the petitioner No. 1 was appointed as worker in the department of Veta Lactum by the respondent company and he worked as such till 3-5-2011 to the entire satisfaction of the respondent and he was getting monthly salary of ₹ 4300/- whereas petitioner no.2 was appointed as worker on 24.2.2007 on monthly salary of ₹ 3700/- and he worked till 3-5-2011. It is further stated that the petitioners have completed 240 days in a calendar year and that on 3-5-2011, the respondent management filed a false complaint against the petitioners in the Police station just to harass and pressurize them and asked them to resign from the job and also gave threats that the management will register false criminal case against them and on 4-5-2011, when the petitioners came to the working place, they were told that their services have been terminated without paying the salary for the months of April & May, 2011 in violation of the provisions of section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the petitioners filed the demand notice dated 13-5-2011 but despite various conciliation meetings nothing has come out and that the services of the petitioner were terminated *w.e.f.* 4-5-2011 without issuing any notice/chargesheet, conducting any enquiry and without complying with the mandatory provisions of the Act. That the respondent had not paid the benefits and dues such as bonus, salary, gratuity, earned leave and other benefits under Labour Law till date for which they are entitled and even the juniors to them have been retained. Against this back-drop a prayer has been made that the petitioners be granted all service benefits including back-wages by holding their retrenchment to be improper and unjustified.

2. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, estoppel and that the petition is hopelessly time barred. On merits, it has been asserted that the being the contractual employee, the services of petitioner Daljeet Singh were legally terminated on 3-5-2011 strictly as per the terms

and conditions of the contract. It is further asserted that on 3-5-2011, the petitioners created nuisance in front of the gate of the company and also abused and threatened the security guard with dire consequences and thereafter after assigning proper reasons, their services were terminated strictly as per law. The respondent prayed for the dismissal of the claim petition.

3. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 18-12-2013.

1. Whether the services of the petitioners have been terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947 as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioners are entitled to? . .*OPP.*

3. Whether this petition is not maintainable as alleged? . .*OPR.*

4. Whether the petitioners are estopped from filling this petition by their acts and conduct? . .*OPR.*

5. Whether this petition is time barred? . .*OPR.*

6. Relief.

4. Besides having heard the Learned Counsel for the parties, I have also gone through the record of the case carefully.

5. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under :

Issue no.1 Yes

Issue no.2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue no.3 No

Issue no.4 No

Issue no.5 No.

Relief Reference answered in favour of the petitioners and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue no.1.

6. The learned counsel for the petitioners contended that the services of the petitioners were illegally terminated by the respondent without following the mandatory provisions of Section 25-N of the Act especially when both the petitioners have completed 240 days in each calendar year. He further contended that before terminating the services of the petitioners, no opportunity of being heard was afforded to them as neither any chargesheet was issued nor any enquiry was conducted against them.

7. On the other hand, Ld. Counsel for the respondent contended that the petitioners created nuisance in front of the gate of the company and also abused and threatened the security guard with dire consequences under the influence of liquor and thereafter after assigning proper reasons, their services were terminated strictly as per law.

8. The petitioner Shri Lucky Rana while appearing into the witness box as PW-1 has stated that he was appointed as worker on 2-1-2006 and worked till 3-5-2011 to the entire satisfaction of the respondent and his monthly salary was ₹ 4300/-. He further contended that petitioner no.2 was appointed on 24-2-2007 and he worked till 3-5-2011 at the monthly salary of ₹ 3700/-. They have completed 240 days in a calendar year and they were orally terminated on 4.5.2011 without giving any notice and paying compensation. He further stated that no enquiry was conducted against them and juniors to them have been retained by the company. Ex. PW-1/A is the copy of demand notice and Ex. PW-1/B and Ex. PW-1/C are the postal receipts. He also stated that the salary for the months of April and May 2011 was not paid to them and since no decision was taken by the conciliation officer within 45 days, they filed the present application before this Court. In cross-examination, he denied that on 3-5-2011 both of them created nuisance in front of the gate of the company's office and started abusing and threatening the security guard under the influence of liquor. He further denied that their services had been terminated on account of the aforesaid misconduct. He also denied that he had threatened Des Raj with dire consequences and that a complaint was also filed against them before the Police by the respondent. He denied that notices were given to them before terminating their services and that the respondent has paid all their legal dues.

9. On the other hand, the respondent examined four RWs. RW-1 Shri Des Raj, HR (Executive) has stated that on 3rd May, 2011, the petitioners alongwith Bahadur Singh started abusing him and the security guard and they (petitioners) also tried to manhandle them by using iron rod and about this incident a report was prepared by the security guard. In cross-examination, he expressed his ignorance that both the petitioner had completed 240 days in each calendar year. He admitted that both the petitioners were working with the respondent at the time of his joining and there were about 150-200 workers in the factory in the year, 2011. He further admitted that no notice and chargesheet was issued to the petitioner and no enquiry was held against them prior to their termination. He denied that after the termination of the petitioners many persons joined with the respondent who are still working with the respondent. He further denied that the petitioners had never abused and threatened anyone and they have been terminated by the respondent on false allegations.

10. RW-2 Shri Shankar Sharma, Duty Manager has deposed that on 3rd May, 2011, the petitioners had quarreled with the security guard and Desh Raj and thereafter the Police was called in the factory and on 4th May, 2011, the management had lodged the report with the Police and thereafter both the petitioners were terminated as per the standing orders of the company. In cross examination, he admitted that Lucky Rana was appointed on 2-1-2006 but denied that Daljit Singh was engaged on 24-2-2007. He admitted that both of them have worked with the respondent till 3rd May, 2011 to the entire satisfaction of the respondent. He further admitted that neither any notice/chargesheet was issued nor any enquiry was held against the petitioners prior to their termination. He also admitted that there were many employees in the company, who joined after the petitioners and that the petitioners were not paid the salary of May 2011. He admitted that other legal dues of the petitioners have also not been paid to them.

11. Shri Surjeet singh, HHC Police Station Parwanoo appeared into the witness box as RW-3 to depose that Shri Des Raj had lodged a report Ex. RW-3/A regarding the beatings given to him by lucky Rana on 3-5-2011. In cross-examination he admitted that the report Ex. RW-3/A is neither signed by him nor the same has been entered by him in the register and no FIR was lodged on the basis of report Ex. RW-3/A.

12. RW-4 Shri C.S. Sharma, Deputy Manager, HR has deposed that on 3-5-2011, the petitioners alongwith Bahadur Singh had quarreled with the security guard and one Executive (HR) namely Shri Des Raj in the factory premises and all the three workers had abused them and threatened them with dire consequences and had also picked one iron rod and thereafter the management had lodged a complaint with the Police Station and the incident was also entered in the security register of the company, the extract of which is Ex. RW-4/A. He further deposed that then the termination letters Ex. RW-4/B and Ex. RW-4/C were issued to both the petitioners. The termination was as per the certified standing orders Ex. RW-4/D of the company. In cross-examination, he admitted that after daily dairy report Ex. RW-3/A, no further action was taken by the Police against the petitioners. He further admitted that neither any notice was issued to the petitioners nor any enquiry was held against them. He denied that the services of the petitioners were terminated illegally as they used to espouse the cause of the workers. He further denied that no incident took place on 3-5-2011 and that the entry in the register Ex. RW-4/A is fabricated.

13. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner No.1 Lucky Rana was appointed as a worker by the respondent on 2-1-2006 and he worked till 3-5-2011. It has also become clear that the petitioner Daljeet Singh was engaged on 1-6-2010 and he had worked till 3-5-2011. Though, the case of the respondent is that the aforesaid Daljeet Singh was a contract employee. However, no documentary evidence has been placed on record by the respondent that he was a contract employee. Therefore, in the absence of any evidence on record, it cannot be said that the petitioner No.2 Daljeet Singh was a contract employee. It is not in dispute that both the petitioners have completed 240 days in each calendar year and in twelve months preceding their termination. The case of the respondent is that the services of both the petitioners were terminated due to the reason that on 3-5-2011, they created nuisance in front of the gate of the respondent company and started abusing and threatening the security guard and one employee namely Des Raj and thereafter the termination letters Ex. RW-4/B and Ex. RW-4/C were issued to both the petitioners. From the perusal of the evidence on record, it has become clear that before terminating the services of the petitioners, no domestic enquiry was conducted and no chargesheet was issued to the petitioners as admitted by RW-1, RW 2 and RW-4. Now, the question which arises for consideration before this Court is as to whether the action of the respondent was illegal and unjustified in terminating the services of the petitioners without holding the domestic enquiry and without following the principles of natural justice on the ground of the misconduct. It is a settled legal proposition that a workman against whom the misconduct is alleged cannot be dismissed unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is a proved misconduct against the workman, he cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. The case of the respondent is that the termination of the services of the petitioners was as per the standing orders of the company. However, the respondent had not placed on record the complete copy of certified standing orders for the reasons best known to it. The Ld. Counsel for the respondent has failed to explain as to why the respondent had withheld the complete copy of the certified standing orders. In the standing orders Ex. RW-4/D nothing has been mentioned that the services of the workman can be terminated without holding any enquiry. Even, if, the standing orders provide for the termination of the permanent workman without conducting any enquiry and by simply giving him termination order, the same is against the principles of natural justice because as observed earlier, it is a settled legal proposition that a workman against whom misconduct is alleged cannot be dismissed from service unless he has been given reasonable opportunity of being heard and a proper domestic enquiry is held against him in respect of alleged misconduct. In the present case admittedly neither any chargesheet was issued to the petitioner nor any domestic enquiry was held before terminating him from service. In **D. K. Yadav** Vs. **M/s J.M.A. Industries Ltd. as reported**

in 1993-1 Supreme Court Service Law Judgments -221, the Hon'ble Apex Court has held as under:

"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's** Vs. **State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

"8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9. ……..

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11. ……..

12. …….

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, admittedly, the petitioners had worked continuously with the respondent from 2-1-2006/1-6-2010 till 3-5-2011. Therefore, it was incumbent upon the respondent to have conducted the enquiry against the petitioners prior to their termination. However, the petitioners were never asked to answer any charges as no chargesheet was issued to them and no enquiry was held before terminating their services, on the basis of the alleged misconduct. Hence, the termination of the services of the petitioners without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioners is in utter violation of the principles of natural justice.

14. There can be no dispute about the fact that the respondent is entitled to lead evidence on merits before this Court to prove the misconduct of the petitioner in case his dismissal is found to be in violation of the principles of natural justice. **In (2006)-6 S.C.C 325, titled as Amritt Vanaspati Co. Ltd.** Vs. **Khem Chand and another**, it has been held by the Hon'ble Apex Court that even if no enquiry has been held by the employer or the enquiry held is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and the employee to adduce evidence before it. Now, the next question which arises for consideration before this Court is as to whether the alleged misconduct has been proved by the respondent against the petitioner or not. RW-1 Des Raj deposed that both the petitioners alongwith Bahadur Singh abused him and the security guard and also tried to manhandle both of them by using iron road. RW-2 deposed that after the quarrel, the Police was called in the factory and thereafter both the petitioners were terminated as per standing orders of the company.

RW-3, stated that the daily diary report Ex. RW-3/A was lodged by one Des Raj regarding the beatings given to him by Luckey Rana on 3-5-2011. RW-4 also deposed that the management had lodged a complaint with Police Station and the incident had also been entered in the security report register Ex. RW-4/A of the company. The perusal of the record makes it clear that a daily diary report was entered in the register of the Police Station Parwanoo, the copy of which is Ex. RW-3/A. However, it has also become clear that after the lodging of the report, no FIR has been lodged on the basis of report Ex. RW-3/A. The respondent has failed to explain as to why no action was taken by the Police on the daily dairy report Ex. RW-3/A. The case of the respondent is that the petitioners had abused the security guard but for the reasons best known to the respondent, the security guard has not been examined in the Court. No cogent and satisfactory evidence has been led by the respondent that the petitioners have created nuisance in front of the gate of the respondent company on 3-5-2011. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the misconduct as alleged by the respondent company has been proved against the petitioners before this Court.

15. Since, it is the admitted case of the respondent that there are more than 100 workers working with the respondent company. Therefore, it was incumbent upon the respondent to have complied with the provisions of section 25-N of the Act before terminating the services of the petitioner but in the instant case the respondent has failed to comply with the provisions of section 25-N of the Act. Section 25-N of the Act reads as under:

Conditions precedent to retrenchment of workmen.—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

The provisions of section 25-N of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) & (b) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has not complied with the conditions of Section 25-N as enumerated in clause (a) & (b), precedent to the retrenchment of petitioners. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** Vs. **Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> "34. ……The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned

workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

16. In the present case also no evidence has been produced by the respondent to prove that before terminating the services of the petitioners, they have complied the provisions of Section 25 N of the Act. Therefore, it has become clear that the respondent has not complied with the conditions (a) & (b) of the section 25-N, which are mandatory in nature as such the termination of the services of the petitioners by the respondent was illegal and unjustified.

17. Therefore, in view of my forgoing discussion, I have no hesitation in holding that the services of the petitioners have been terminated illegally without conducting of any enquiry and without following the provisions of Industrial Disputes Act, 1947. Hence, this issue is decided in favour of the petitioners and against the respondent.

Issue No.2.

18. Since, I have held under issue No.1 above that the termination of services of the petitioners by the respondent without complying with the provisions of the Act is improper, illegal and unjustified, hence, the petitioners are held entitled to reinstatement in service with seniority and continuity.

19. Now, the question which arises for consideration, before this Court is as to whether the petitioners are entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** Vs. **Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is setaside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** Vs. **Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

20. Moreover, the petitioners were under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** Vs. **S.C Sharma** that:

"16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

21. In the present case, the petitioners have failed to discharge their burden by placing any material on record that they were not gainfully employed after their termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioners are not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioners and against the respondent.

Issues No. 3 to 5.

22. The onus to prove these issues was on the respondent. However, in support of these issues, no specific evidence has been led by the respondent. Therefore, in the absence of any evidence on record, these issues are decided in favour of the petitioners and against the respondent.

Relief

As a sequel to my above discussion and findings on issues No.1 to 5, the claim of the petitioners succeeds and is hereby allowed with the result, the petitioners are ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioners are not entitled to any backwages. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 28th day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref No. 4 of 2016

Instituted on 2-1-2016

Decided on 19-7-2017

Prem Singh Kanwar son of Late Sh. Narain Singh, r/o Village Natala, P.O. Kalh, Tehsil Kandaghat, District Solan, H.P. . .*Petitioner.*

Versus

The Executive Engineer, City Division Electricity Board, HPSEB, Shimla-171 001.
. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Neel Kamal Sood, Advocate

For respondent : Shri Sudhir Negi, Advocate vice Shri Ramakant Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether termination of the services of Shri Prem Singh Kanwar s/o Late Sh. Narain Singh, r/o Village Natala, P.O. Klha, Tehsil Kandaghat, Distt. Solan, H.P. by the Senior Executive

Engineer, City Electrical Division, HPSEB, Ltd. Shimla-1, Distt. Shimla, H.P. *w.e.f.* 25.8.1989 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially he was appointed as Beldar on daily wages basis with the respondent *w.e.f.* 1.1.1989 and worked till December, 1990 and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and that too without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the respondent had engaged many fresh persons after the illegal termination of the petitioner and even the persons junior to him have been retained in violation of the provisions of Sections 25-G and 25-H of the Act. That the petitioner had completed 240 days in twelve calendar months preceding his termination and after his termination, he requested the respondent for his re en-gagement but despite assurance, his services had not been re-engaged. Against this back-drop a prayer has been made that the directions be issued to the respondent to re-instate him in service along-with all consequential benefits including back wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petitioner had worked with the respondent *w.e.f.* 25.1.1989 to 24.8.1989 only for a period of 210 days with certain breaks and interruption and he had not completed 240 days of continuous service in the calendar year, hence, he has not acquired the status of temporary workman, that the petitioner had abandoned the job long back in the year, 1989 at this own volition and as such neither any notice nor compensation was payable to him, petition suffers from the vice of delay and latches and maintainability etc. On merits, it has been denied that the petitioner had worked till December, 1990 and that his services had orally been terminated by the respondent. It is asserted that the petitioner neither made any request for re employment nor visited the office of the respondent. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 5-9-2016.

1. Whether the termination of the services of petitioner *w.e.f.* 25-8-1989 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the claim is not maintainable as alleged? . .*OPR.*

4. Whether the present petition is barred by limitation as alleged? . .*OPR.*

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :

Issue No.1 No

Issue No.2 Becomes redundant

Issue No.3 No

Issue No.4 Yes

Relief Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues No.1 & 4:

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of Sections 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of judgment passed by the Hon'ble High Court Ex. PW-1/B and the certified copy of the list of juniors received under Right to Information Act, 2005 Ex. PW-1/C. In cross-examination, he admitted that he was engaged on 25.1.1989 on muster roll basis. He denied that he had worked only upto 24.8.1989. He admitted that he had worked for 210 days only. He denied that his services were never terminated and he had left the job at his own. He further denied that despite telephonic call, he failed to resume the duties. He admitted that he had raised the industrial dispute after 22 years. He denied that neither any junior persons have been retained nor any fresh hands have been engaged after his termination.

12. On the other hand, the respondent examined one Shri Prakash Chand Sharma, Senior Assistant as RW-1, who deposed that the petitioner was engaged on 25-1-1989 on muster roll basis and he worked till 24-8-1989. He further deposed that the petitioner had never completed 240 days in any calendar year. The mandays chart of the petitioner is Ex. RW-1/A. The demand notice was raised by the petitioner after 22 years in the year, 2011. The petitioner had left the job at his own and no junior to him was retained and no fresh hands have been engaged. In cross-examination, he denied that the petitioner was engaged on 1-1-1989 and he worked till December, 1990. He

admitted that no notice was issued and no compensation was given to the petitioner. He denied that the petitioner was never called upon to resume his duties. He admitted that Ex. PW-1/C has been issued by their office and the information is correct. He denied that the junior persons were retained by the board and that he had completed 240 days in a calendar year.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 210 days as daily waged Beldar with the respondent during the entire period *w.e.f.* 25-1-1989 till 24-8-1989 as per the mandays chart Ex. RW-1/A. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. Undisputedly, the petitioner had raised his industrial dispute after a period of about 22 years. He admitted in cross-examination that he had raised the industrial dispute after about 22 years. Therefore, the position of law in respect of a stale claim is required to be seen.

16. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

17. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and

employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. ***In Haryana State Coop. Land Development Bank*** *Vs.* ***Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. *"The decision of Ajaib Singh (supra) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom* Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of

Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38)].

6. We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

16. Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, **as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale.** That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of

the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(*Emphasis supplied*).

19. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** *Vs.* **Babu Ram**, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. **In Assistant Engineer, CAD Kota** *Vs.* **Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

21. In **UP State Road Transport Corporation** *Vs.* **Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, the never less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the

matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

22. **In (2009) 13 SCC 746, State of Karnataka** *Vs.* **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

23. In a recent judgment of our **Hon'ble High Court delivered in CWP no. 1912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26.10.2016**, it has been held as under:

"9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations is not sufficient to explain the delay.

25. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were terminated during August, 1989 and he raised the present dispute after about a period of 22 years. In his affidavit by way of evidence Ex. PW-1/A, the petitioner deposed that while terminating his services the employer had given assurance to him that on the availability of work and funds, he would be re-engaged for the same work but despite assurance given by the respondent, he was not reinstated. However, except for his bald statement there is no other evidence on record to suggest as to when he visited the respondent for his reinstatement. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 22 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 22 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. On merits, from the mandays chart Ex. RW-1/A, it is clear that the petitioner was engaged as daily waged Beldar by the respondent on 25.1.1989 and he worked as such till 24.8.1989. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. The perusal of mandays chart Ex. RW-1/A goes to show that the petitioner had worked only for 123 days with the respondent during the entire aforesaid period. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon"ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:-

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under Section 25-F of the Industrial Disputes Act, 1947 and as such no protection of Section 25-F can be granted to the petitioner.

27. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in their reply but they have totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 22 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 22 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 22 years as the delay in the present case is certainly fatal.

28. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". In his deposition, the petitioner has also tendered in evidence the certified copy of the list of the juniors received under Right to Information Act Ex. PW-1/C. The learned counsel for the petitioner also invited my attention to the cross-examination of RW-1 wherein he had admitted that the list of juniors Ex. PW 1/C has been issued by their office which is correct. However, as observed earlier, the petitioner had raised the demand notice after a period of 22 years as such there is no question of consideration of equal treatment with the persons who have been shown in Ex. PW-1/C. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP no. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** *Vs.* **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 22 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 22 years.

29. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 22 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue No.2:

30. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

Issue No.3.

31. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 19th Day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL–CUMLABOUR COURT, SHIMLA

Ref no. 72 of 2015

Instituted on 1.10.2015

Decided on 29.7.2017

Rattan Lal s/o Shri Lekh Ram r/o Village Chubhani, P.O Bhalia, Tehsil Sundernagar, District Mandi, HP. . .*Petitioner.*

Vs.

3. The Executive Engineer, HP PWD Division Kalpa, District Kinnaur, HP.

4. The Assistant Executive engineer, HP PWD Sub Division Kalpa, P.O Kalpa, District Kinnaur, HP. . .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Naresh Sharma, Advocate

For respondents : Ms. Reena Chauhan, Dy. DA

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether termination of the services of Sh. Rattan Lal s/o Sh. Lekh Ram, Village-Chubhani, P.O. Bhalia, Tehsil Sundernagar, Distt. Mandi, H.P. during December, 2011 by the Executive Engineer, H.P.PWD Division Kalpa, Distt. Kinnaur, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what relief of re-instatement, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that he was engaged by the respondents as JCB Driver/Beldar on daily wages basis *w.e.f.* May, 2010 and that he worked with full sincerity, devotion as well as to the utmost satisfaction of his superiors and had completed 180 days in a calendar year but his services were orally terminated in December, 2011 in violation of the provisions of sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that it was only the petitioner who was subjected to discriminatory treatment whereas number of other junior persons were allowed to continue who are still in service with the respondents and they have been given all kind of benefits and even after the oral termination of the petitioner, the respondents kept on engaging fresh persons from time to time. It is also stated that the petitioner made several requests for his re-engagement which was disallowed by the respondents with the reasoning that when the work would be available, he would be called for work. Against this back-drop a prayer has been made that the respondents be directed to re-engage the petitioner in service with all consequential service benefits.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, time barred etc. On merits, it has been

asserted that the services of the petitioner were hired by the respondent department on temporary basis against payment *w.e.f.* May, 2010 to Jan., 2011 in spells as JCB driver and also paid through hand receipt and he was not engaged on muster roll but only engaged in emergent circumstances as a stopgap arrangement for removal of slips due to absence of regular JCB operator. It is further asserted that the petitioner has not worked for 180 days *w.e.f.* May, 2010 to Jan., 2011 and even taking into consideration his entire length of working days, it comes to only 120 days for entire period, hence, no violation of section 25-F of the Act has been caused on the part of the respondents. It is denied that the juniors to petitioner have been retained and that no cause of action accrues to the petitioner for raising this dispute after more than 3 years. The respondents prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 22.8.2016 :

1. Whether the termination of the services of petitioner during December, 2011 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the present petition is not maintainable as alleged? . .*OPR.*

4. Whether the petition is time barred as alleged? . .*OPR.*

5. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No

Issue No.2 Becomes redundant

Issue No.3 No

Issue No.4 No

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No.1 :

7. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 180 days in each calendar

year as required in tribal area. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

8. On the other hand, learned Dy. DA for the respondents contended that the services of the petitioner had been hired only on temporary basis as stopgap arrangement in the absence of regular JCB operator and he was paid only a fixed amount of ₹ 8000/- by issuing a hand receipt and even he has not completed 180 days in a calendar year, hence, there is no requirement for issuing notice under Section 25-F of the Act. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

9. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he denied that he had been engaged on temporary basis on stopgap arrangement. He admitted that he was being pad a fixed amount of ₹ 8000/- per month as wages. He denied that he had not completed 180 days in a calendar year and that he was not kept on muster roll basis. He further denied that since the regular driver was absent therefore he was kept on stopgap arrangement. He also denied that neither any junior was retained nor any fresh hand was engaged after his termination.

10. On the other hand, the respondents examined one Shri Lalit Kumar Jaryal, Assistant Engineer, as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of hand cash receipts vouchers dated 22-6-2010 amounting to ₹ 8000/-, dated 20-9-2010 amounting to ₹ 8000/- each and dated 21-1-2011 amounting to ₹ 8000/- Ex. RW-1/B to Ex. RW-1/F. In cross-examination, he admitted that no letter has been issued to the petitioner regarding his appointment as stopgap arrangement. He further admitted that no notice has been issued and no compensation has been given to the petitioner prior to his termination. He denied that the junior persons to the petitioner have been retained. He further denied that the petitioner was not engaged as a stopgap arrangement but he was engaged as a daily wager.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked as JCB driver with the respondent from 17.5.2010 to 15.1.2011. It is not disputed that the mandatory working days of 240 days in a calendar year have been reduced to 180 days in tribal area. The learned counsel for the petitioner contended that the petitioner has been repeatedly terminated and re-engaged in the job during the period of twelve calendar months from 17.5.2010 to 15.1.2011 and despite repeated breaks, he had worked for 180 days in preceding twelve calendar months. However, to substantiate his contention, no documentary evidence has been placed on record by the petitioner. The petitioner has not produced any evidence to suggest that he has completed 180 days in twelve calendar months preceding his termination. Rather the case of the respondent is that the services of the petitioner had been hired only on temporary basis as stopgap arrangement in the absence of regular JCB operator and he was paid only a fixed amount of ₹ 8000/- per month by issuing a hand receipt and even he has not completed 180 days in a calendar year. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:-

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 180 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 180 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under Section 25-F of the Industrial Disputes Act, 1947 and as such no protection of Section 25-F can be granted to the petitioner.

12. The further case of the petitioner is that after his termination, the respondent had retained his juniors in service and engaged fresh hands in violation of the provisions of section 25 G and 25-H of the Act. However, no evidence has been led by the petitioner that his juniors have been retained and fresh hands have been engaged by the respondents. The case of the respondents is that the services of the petitioner had been hired only on temporary basis as stop gap arrangement in the absence of regular JCB Operator. Moreover, it was for the petitioner to prove by leading cogent and satisfactory evidence on record that he was engaged as a regular JCB driver and not as a stop gap arrangement. However, no evidence has been led by the petitioner in this respect. No appointment letter or any other document has been placed on record by the petitioner to prove that he was appointed as a regular JCB Driver. In **(2006) 6 SCC 221, Reserve Bank of India** Vs. **Gopinath Sharma and others**, it has been held by the Hon'ble Supreme Court that the workman not appointed to any regular post but engaged on the basis of need of work had no right to the post. The relevant extract of the aforesaid judgment is reproduced as under:

> "22. In our view, respondent No.1 was not appointed to any regular post but was only engaged on the basis of the need of the work on day to-day basis and he has no right to the post and that his dis-engagement cannot be treated as arbitrary."
> ……
> ……The High Court completely erred in relying on Section 25 G of the I.D. Act while not holding that the workman has been retrenched within the meaning of Section 25F and thus misdirected itself about the applicability of provisions of Section 25G of the I.D. Act even if it does not involve retrenchment. The High Court also failed to consider that the inclusion of the name in the waiting list for appointment as 'Ticca Mazdoor' on day to-day basis does not confer any right for regular appointment or to hold any post".

Since, the petitioner was only engaged as a Driver on temporary basis during the absence of a regular driver, therefore, the provisions of Sections 25-G and 25-H are not attracted to the present case.

13. Therefore, keeping in view the law laid down (*supra*) and also in view of the entire evidence on record, it can safely be held that the petitioner has failed to prove that his alleged termination during December, 2011 was illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue No.2:

14. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue No.3:

15. Consequent upon the reference, made to this Court by the appropriate government, the petitioner had filed the claim petition which cannot be said to be not maintainable. Thus, by holding the claim petition to be maintainable, this issue is decided in favour of the petitioner and against the respondents.

Issue no.4 :

16. During the course of arguments, this issue was not pressed by the learned Dy. DA for respondents. Hence, the same is decided in favour of the petitioner and against the respondents.

Relief :

As a sequel to my findings on the aforesaid issues, the claim petition filed by the petitioner deserves to be dismissed and accordingly, the same is dismissed with the result, this reference is decided against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 29th day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref No. 33 of 2015

Instituted on 27-6-2015

Decided on 31-7-2017

Rajesh Kumar s/o Shri Asha Ram, r/o Tulsi Niwas near Engine Ghar, Sanjauli Shimla-6
. .*Petitioner.*

Versus

1. State of H.P. through the Principal Secretary (Education) to the Government of H.P. Shimla-2.

2. The Director Education, Shimla-1, H.P.

3. The Principal, Rajeev Gandhi Degree College, Chaura Maidan Shimla-4, H.P.

8. Shri Khushwant Lal Attendant O/o Principal, Rajeev Gandhi Degree College, Chaura Maidan, Shimla, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : : Shri Ranvir Chauhan, Advocate

For respondents no. 1 to 3 : Ms. Reena Chauhan, Dy. DA

For respondent no.4 : *Ex-parte*

AWARD

The reference for adjudication, sent by the appropriate Government, is as under:

"Whether time to time termination of the services of Sh. Rajesh Kumar s/o Sh. Asha Ram, r/o Tulsi Niwas near Engine Ghar, Village Sangti, P.O. Sanjauli, Shimla, H.P. from the year 2000 to 2009 and finally terminating him from services *w.e.f.* 01-11-2009 by the i) The Director of Higher Education, Himachal Pradesh, Shimla-181001, ii) The Principal, Rajiv Gandhi Degree Collage, Chaura Maidan, Shimla-171004, without following the provisions of the Industrial Disputes Act, 1947 and by retaining similar situated workmen and recruiting fresh persons, in his place is legal and justified? If not, to what relief of reinstatement in service, back wages, seniority, continuity of service, compensation and any other benefits, the aggrieved worker is entitled to from the above employers?"

2. Briefly, the case of the petitioner is that *w.e.f.* 29-7-1999, he was initially engaged as Lab. Attendant on daily wages basis with respondent No.3 and he was being given wages as fixed by the government from time to time and he performed his duties to the best satisfaction of his superiors which is clear from letter dated 1-1-2009 *vide* which the Principal of the College had recommended his case for regularization to the higher authority. It is further stated that the petitioner had completed 240 days in each calendar year despite the fact that certain artificial and fictional breaks had been given to him in order to frustrate his seniority but *w.e.f.* 1-11-2009, the respondents in colourable exercise of their power had orally asked the petitioner that he need not to come for duty as his services stand terminated *vide* letter dated 1-11-2009. It is also stated that when the petitioner was accommodated, he preferred an application dated 28-7-2010 for re engagement and was orally informed that he would keep in touch and advertisement would be displayed on the college notice board and assurance was given by the respondent for his reinstatement and thereafter the petitioner moved an application dated 1-6-2012 for eliciting certain information regarding his working experience etc., in order to take legal recourse for his re-engagement and in the mean time the respondents conducted interview for engaging Laboratory assistant on 26-6-2012 and he (petitioner) also reported for interview but he was not interviewed on the plea that he had sought information under the RTI Act and in the said interview the respondent No.4 was engaged as Laboratory Assistant who is still continuing with the respondent and is junior to the petitioner. That the services of the petitioner had been terminated orally whereas junior/

similar situated persons have been retained in services in violation of the provisions of the "last come first go" and while terminating the services of the petitioner, the respondents have also violated the provisions of section 25 of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). That the petitioner had worked as daily wager with the respondents for about 10 years and his services have been terminated without following any provisions of the Act. Against this back-drop a prayer has been made that the respondents be directed to adjust the petitioner against any vacant post including class-IV post keeping in view the fact that the petitioner had worked for 10 years with the respondents. It is further prayed that the respondents be directed to consider the petitioner for regularization on completion of eight years of service as per the policy of the State.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability being barred by limitation, petition barred by resjudicata etc. On merits, it has been asserted that no artificial and fictional breaks were given to the petitioner and his services automatically came to an end on arrival of permanent staff in his place as the services of the petitioner were engaged on temporary basis and the wages for his engagement was being paid from A.F (Student Fund) in which the revenue is always generated from various sources which includes sub part of the other funds. It is further asserted that the respondents never gave any assurance to the petitioner to keep in touch etc. and as far as the recommendations issued by the then Principal for Higher Authorities regarding utmost satisfaction about the work performed by the petitioner and others are concerned, the Principal of any College itself is not the competent appointing authority of any staff and for the appointment of any staff, the recommendation of Government is mandatory. It is also asserted that after advertising the post during the year 2012, the petitioner neither made any representation nor appeared before the interview board and as far as the engagement of respondent No.4 is concerned, he himself appeared before the interview board and his selection is purely on the basis of merits. The respondents have not violated the principles of "last come first go" as neither any junior person has been retained nor his services have been terminated by the department, hence, there arose no question to issue notice under section 25-F of the Act and even the petitioner only put 240 days in the year 2004 and 2005 whereas the criteria for regularization as per the Government policy enforce a worker has to put at least 8 years of continuous service without any break. That the appointment of the petitioner was purely on stop gap arrangement for 89 days only and now the work for which the petitioner was engaged is being looked after by the permanent staff. The respondents prayed for the dismissal of the claim petition.

4. By filling rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 18-6-2016.

1. Whether time to time termination of the services of the petitioner for the year 2000 to 2009 and finally terminating him from service *w.e.f.* 1-11-2009 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 and by retaining similar situated workmen and recruiting fresh persons in his place is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is barred by limitation as alleged? . .*OPR.*

4. Whether the petition is not maintainable as alleged? . .*OPR.*

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No

Issue No.2 Becomes redundant

Issue No.3 Not pressed

Issue No.4 No

Relief Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues No.1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, learned Dy. DA for the respondents contended that the services of the petitioner have been engaged only on temporary/stop gap basis and his engagement was not under the R&P Rules, hence, he is not entitled to any relief.

10. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of letter dated 1-1-2009 Ex. PW-1/B and application dated 1-6-2012 Ex. PW-1/C. In cross-examination, he denied that his services were engaged temporarily on stop gap arrangement. He admitted that he did not appear in the interview but volunteered that he was not allowed to appear in the interview. He denied that he did not apply for the interview. He further denied that no junior person to him was retained by the respondents and that he had not completed 240 days in each calendar year during his ten years service. He also denied that no fictional breaks were given to him.

11. PW-2 Shri Pradeep Kaundal, Superintendent Grade-2 has brought the summoned record and produced the copy of payment chart of the petitioner Ex. PW-2/A, copy of letter dated 11-9-1997 mark PX, office order dated 29-7-1999 Ex. PW-2/B, application of the petitioner Ex. PW-2/C and advertisement dated 26-6-2012 Ex. PW-2/D. He further deposed that no notice has been issued to the petitioner for his retrenchment. In cross-examination, he stated that the petitioner was engaged on stop gap arrangement on temporary basis till the creation of regular post. He admitted that the petitioner was never retrenched, hence, no notice was required and that he did not appear for the interview as per the advertisement Ex. PW-2/D.

12. On the other hand, the respondents examined one Shri Rajesh Kumar, Clerk, as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. In cross-examination, he admitted that the petitioner was appointed on 29-7-1999 as Laboratory Assistant on daily wages and he worked continuously for more than 10 years. He further admitted that the Principal wrote a letter on 1-1-2009 regarding the efficiency of the service rendered by the petitioner as satisfactory. He also admitted that the petitioner rendered his service in the department for 240 days each in the year 2004 and 2005 only as per Ex. PW-2/A. He admitted that Khushwant Singh and Nand Lal were engaged as Laboratory Assistants after the petitioner. He admitted that the petitioner had moved an application Ex. PW-2/C.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was initially appointed as a laboratory attendant purely on stop gap arrangement for a period of 89 days in science department of Government College, Chaura Maidan Shimla-4 *w.e.f.* 29-7-1999 *vide* office order Ex. PW-2/B. RW-1 specifically deposed in his evidence by way of affidavit Ex. RW-1/A that the services of the petitioner automatically came to an end on the arrival of the permanent staff in his place. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and prior to his termination no notice and compensation has been given to him. However, when regard is given to payment chart Ex. PW-2/A, it has become clear that the petitioner had completed 240 days only in the years, 2004 and 2005. The case of the petitioner is that his services were terminated *w.e.f.* 1-11-2009. However, the petitioner has not produced any evidence to suggest that he has completed 240 days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 in case titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under :

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat*** *V/s* ***Dayabhai Amar Singh,*** the Hon'ble Supreme Court has held that :—

> ***"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days in preceding twelve months lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that the respondents had violated the principles of "last come first go" as juniors to him have been retained and fresh persons were

engaged after his termination. In his evidence by way of affidavit Ex. PW-1/A, the petitioner has specifically deposed that the respondents conducted the interview for engaging Lab. Attendant on 26-6-2012 and in the said interview the respondent no.4 Khushwant Singh was appointed as Lab. Attendant who was his junior. He further deposed that the respondent had also retained Shri Nand Lal who was also his junior. Admittedly, Khushwant Singh was engaged on the basis of interview through advertisement dated 19.6.2012 whereas the petitioner has failed to appear before the interview board. Therefore, the petitioner cannot claim equal treatment with respondent No.4 Khushwant Singh. Moreover, no evidence has been led by the petitioner regarding the date of appointment of Nand Lal and regarding the fact that he was his junior. Therefore, in the absence of any evidence on record it cannot be said that the respondents have retained his juniors and engaged fresh hands in violation of provisions of sections 25-G and 25-H of the Act.

15. As observed earlier, from the perusal of the record it stands duly proved that the services of the petitioner had been engaged by the respondents purely as a stop gap arrangement *vide* office order Ex. PW-2/B. In ***2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. Vs. Y.D Deshpande &Ors., it has been held*** that :—

> ***The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post.***

It was also held in ***(2006) 6 SCC 221, case titled as Reserve Bank of India Vs. Gopinath Sharma & Anr.*** that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

16. In **(2006) 6 SCC 221, Reserve Bank of India *Vs.* Gopinath Sharma and others**, it has been held by the Hon'ble Supreme Court that the workman not appointed to any regular post but engaged on the basis of need of work had no right to the post. The relevant extract of the aforesaid judgment is reproduced as under :

> **"22.** In our view, respondent No.1 was not appointed to any regular post but was only engaged on the basis of the need of the work on day-to-day basis and he has no right to the post and that his dis-engagement cannot be treated as arbitrary. ……
> ……The High Court completely erred in relying on Section 25 G of the I.D. Act while not holding that the workman has been retrenched within the meaning of Section 25F and thus misdirected itself about the applicability of provisions of Section 25G of the I.D. Act even if it does not involve retrenchment. The High Court also failed to consider that the inclusion of the name in the waiting list for appointment as 'Ticca Mazdoor' on day to-day basis does not confer any right for regular appointment or to hold any post".

17. In the instant case, the services of the petitioner were engaged as a stop gap arrangement and he was not appointed on any regular post. No evidence has been led by the petitioner to prove that he was appointed on any regular post rather the office order Ex. PW-2/B shows that the petitioner was appointed as Laboratory Attendant due to non-creation of posts of laboratory staff. Since, the petitioner was only engaged on temporary basis as a stop gap arrangement, therefore, the provisions of sections 25-G and 25-H are not attracted to the present case.

18. Therefore, keeping in view the law laid down (*supra*) and also in view of the entire evidence on record, it can safely be held that the termination of the services of the petitioner by the

respondents was neither illegal nor unjustified. Accordingly, issue No.1 is decided in favour of the respondents and against the petitioner.

Issue No.2

19. Since, the petitioner has failed to prove issue No.1, this issue becomes redundant.

Issue No.3 :

20. During the course of arguments, this issue has not been pressed by the learned Dy. DA for respondents. Hence, the same is decided in favour of the petitioner and against the respondents.

Issue No.4 :

21. Consequent upon the reference, made to this Court by the appropriate Government, the petitioner had filed the claim petition which cannot be said to be not maintainable. Thus, by holding the claim petition to be maintainable, this issue is decided in favour of the petitioner and against the respondents.

Relief :

As a sequel to my findings on the aforesaid issues, the claim petition filed by the petitioner deserves to be dismissed and accordingly, the same is dismissed with the result, this reference is decided against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate Government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 31st day of July, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

29-7-2017.

Present: None for the petitioner
Shri Dheeraj Kanwar, Advocate for respondent

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for the service of the petitioner. As per acknowledgement, the notice issued for the service of the petitioner has been received by one Shri Krishan Chand, General Secretary, HRTC Conductor Union H.P. but despite having been served none appeared on behalf of the petitioner which clearly shows that the petitioner union is not interested to pursue this case arising out of the reference. Hence, to issue notice again for the

service of the petitioner union and to further adjourn the case would be a futile exercise. Therefore, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

"**Whether miscellaneous demands raised by the General Secretary, State HRTC Conductor Union, Himachal Pradesh, H.Q. Mandi *vide* demand notices dated 22-11-2011 & 05-10-2012 (copies enclosed) before and to fulfilled by the Managing Director, Himachal Road Transport Corporation, Shimla are legal and justified? If yes, what relief, monetary and other service benefits in terms of demand notices dated 22-11-2011 & 05-10-2012, the concerned workmen are entitled to from the above employer/management?"**

From the aforesaid reference is the clear that the petitioner union has raised demands *vide* demand notices dated 22-11-2011 and 5-10-2012 before and to be fulfilled by the Managing Director, HRTC, Shimla but despite having been served none appeared on behalf of the petitioner union to file statement of claim. Therefore, in the absence of any material on record, it cannot be said that the demands raised *vide* demand notices dated 22-11-2011 and 5-10-2012 before and to be fulfilled by the Managing Director, HRTC, Shimla are legal and justified. Hence, the reference is answered against the petitioner union and the award is passed accordingly. Let a copy of this award be sent to the appropriate Government for publication in official gazette. File, after completion be consigned to records.

Announced:
29-7-2017.

SUSHIL KUKREJA,
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 4 of 2016

Instituted on 2-1-2016

Decided on 19-7-2017

Prem Singh Kanwar son of Late Sh. Narain Singh, r/o Village Natala, P.O. Kalh, Tehsil Kandaghat, District Solan, H.P. . .*Petitioner.*

Vs.

The Executive Engineer, City Division Electricity Board, HPSEB, Shimla-171001
. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Neel Kamal Sood, Advocate.

For respondent : Shri Sudhir Negi, Advocate *vice* Shri Ramakant Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate Government, is as under :

"Whether termination of the services of Shri Prem Singh Kanwar s/o Late Sh. Narain Singh, r/o Village Natala, P.O. Klha, Tehsil Kandaghat, Distt. Solan, H.P. by the Senior Executive Engineer, City Electrical Division, HPSEB Ltd., Shimla-1, Distt. Shimla, H.P. *w.e.f.* 25-8-1989 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially he was appointed as beldar on daily wages basis with the respondent *w.e.f.* 1-1-1989 and worked till December, 1990 and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and that too without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the respondent had engaged many fresh persons after the illegal termination of the petitioner and even the persons junior to him have been retained in violation of the provisions of sections 25-G and 25-H of the Act. That the petitioner had completed 240 days in twelve calendar months preceding his termination and after his termination, he requested the respondent for his re-engagement but despite assurance, his services had not been re-engaged. Against this back-drop a prayer has been made that the directions be issued to the respondent to re-instate him in service alongwith all consequential benefits including backwages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petitioner had worked with the respondent w.e.f. 25-1-1989 to 24-8-1989 only for a period of 210 days with certain breaks and interruption and he had not completed 240 days of continuous service in the calendar year, hence, he has not acquired the status of temporary workman, that the petitioner had abandoned the job long back in the year 1989 at this own volition and as such neither any notice nor compensation was payable to him, petition suffers from the vice of delay and latches and maintainability etc. On merits, it has been denied that the petitioner had worked till December, 1990 and that his services had orally been terminated by the respondent. It is asserted that the petitioner neither made any request for re-employment nor visited the office of the respondent. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 5-9-2016.

1. Whether the termination of the services of petitioner *w.e.f.* 25-8-1989 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the claim is not maintainable as alleged? . .*OPR.*

4. Whether the present petition is barred by limitation as alleged? . .*OPR.*

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :

Issue No.1 No

Issue No.2 Becomes redundant

Issue No.3 No

Issue No.4 Yes

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues Nos.1 & 4 .

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of judgment passed by the Hon'ble High Court Ex. PW-1/B and the certified copy of the list of juniors received under Right to Information Act, 2005 Ex. PW-1/C. In cross-examination, he admitted that he was engaged on 25-1-1989 on muster-roll basis. He denied that he had worked only upto 24-8-1989. He admitted that he had

worked for 210 days only. He denied that his services were never terminated and he had left the job at his own. He further denied that despite telephonic call, he failed to resume the duties. He admitted that he had raised the industrial dispute after 22 years. He denied that neither any junior persons have been retained nor any fresh hands have been engaged after his termination.

12. On the other hand, the respondent examined one Shri Prakash Chand Sharma, Senior Assistant as RW-1, who deposed that the petitioner was engaged on 25-1-1989 on muster-roll basis and he worked till 24.8.1989. He further deposed that the petitioner had never completed 240 days in any calendar year. The mandays chart of the petitioner is Ex. RW-1/A. The demand notice was raised by the petitioner after 22 years in the year 2011. The petitioner had left the job at his own and no junior to him was retained and no fresh hands have been engaged. In cross-examination, he denied that the petitioner was engaged on 1-1-1989 and he worked till December 1990. He admitted that no notice was issued and no compensation was given to the petitioner. He denied that the petitioner was never called upon to resume his duties. He admitted that Ex. PW-1/C has been issued by their office and the information is correct. He denied that the junior persons were retained by the board and that he had completed 240 days in a calendar year.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 210 days as daily waged beldar with the respondent during the entire period *w.e.f.* 25-1-1989 till 24-8-1989 as per the mandays chart Ex. RW-1/A. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. Undisputedly, the petitioner had raised his industrial dispute after a period of about 22 years. He admitted in cross-examination that he had raised the industrial dispute after about 22 years. Therefore, the position of law in respect of a stale claim is required to be seen.

16. In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under :

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

17. In Assistant Executive Engineer, Karnataka Vs. **Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour

Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under :

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. In Haryana State Coop. Land Development Bank *Vs.* ***Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without backwages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under :

> 13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."
>
> 14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom.

A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT [2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. "In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

> 5. "The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *v.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT [(1999) 3 SC 38).]
>
> 6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases **where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale.** That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*)] , opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. **As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.** When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (Emphasis supplied).

19. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation *Vs.* Babu Ram, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. In Assistant Engineer, CAD Kota *Vs.* Dhan Kunwar reported in (2006) 5 SCC 481, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

21. In **UP State Road Transport Corporation *Vs.* Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in

which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

22. In (2009) 13 SCC 746, State of Karnataka *Vs.* Ravi Kumar the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

23. In a recent judgment of our **Hon'ble High Court delivered in CWP no. 1912 of 2016 titled as Bego Devi *Versus* State of HP and others decided on 26.10.2016**, it has been held as under:

"9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations is not sufficient to explain the delay.

25. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were terminated during August, 1989 and he raised the present dispute after about a period of 22 years. In his affidavit by way of evidence Ex. PW-1/A, the petitioner deposed that while terminating his services the employer had given assurance to him that on the availability of work and funds, he would be re-engaged for the same work but despite assurance given by the respondent, he was not reinstated.

However, except for his bald statement there is no other evidence on record to suggest as to when he visited the respondent for his reinstatement. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 22 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 22 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. On merits, from the mandays chart Ex. RW-1/A, it is clear that the petitioner was engaged as daily waged beldar by the respondent on 25.1.1989 and he worked as such till 24.8.1989. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. The perusal of mandays chart Ex. RW-1/A goes to show that the petitioner had worked only for 123 days with the respondent during the entire aforesaid period. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika* Vs. *Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***
>
> In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—
>
> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

27. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in their reply but they have totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is

difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 22 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 22 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 22 years as the delay in the present case is certainly fatal.

28. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". In his deposition, the petitioner has also tendered in evidence the certified copy of the list of the juniors received under Right to Information Act Ex. PW-1/C. The learned counsel for the petitioner also invited my attention to the cross-examination of RW-1 wherein he had admitted that the list of juniors Ex. PW 1/C has been issued by their office which is correct. However, as observed earlier, the petitioner had raised the demand notice after a period of 22 years as such there is no question of consideration of equal treatment with the persons who have been shown in Ex. PW-1/C. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP no. 4515/2012 decided on 13.6.2012, titled as Suraj Mani *Vs.* HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 22 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 22 years.

29. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 22 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue no.2 :

30. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no.3:

31. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 19th Day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 39 of 2016

Instituted on 2-5-2016

Decided on 19-7-2017

Chaman Lal s/o Late Sh. Anant Ram, r/o Village Chamyana, P.O. Kamlanagar, Tehsil & District Shimla, H.P. . .*Petitioner.*

Vs.

1. The Executive Engineer, H.P.S.E.B. Ltd., Division Kasumpti Block No.8, Tehsil & District Shimla.

2. The Assistant Engineer/S.D.O., ESD Kasumpti, office of the Assistant Engineer, HPSEB Ltd., Kasumpti, Shimla-171009 . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Neel Kamal Sood, Advocate.

For respondents : Shri Sudhir Negi, Advocate *vice* Shri Ramakant Sharma, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"**Whether alleged termination of services of Sh. Chaman Lal s/o Sh. Anant Ram, r/o Village Chamyana, P.O. Kamlanagar, Tehsil & Distt. Shimla, H.P. during January, 1993 by the Executive Engineer, HPSEB, Division Charlie Villa, Tehsil & Distt. Shimla, H.P., who had worked as beldar on daily wages only for 201 days during 1992 1993 and has raised his industrial dispute after about 20 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 201 days and delay and justified? If not, keeping in view of working period of 201 days and delay of about 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that initially he was appointed as beldar on daily wages basis with the respondents *w.e.f.* 1-1-1992 and worked as such till December, 1993 and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and that too without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the respondents have engaged many fresh persons after the illegal termination of the petitioner and even the persons junior to him namely Molak Ram and Bhim Singh have been retained in violation of the provisions of sections 25-G and 25-H of the Act. That the petitioner had completed 240 days in twelve calendar months preceding his termination and after his termination, he requested the respondents for his re-engagement but despite assurance, his services had not been re-engaged. Against this back-drop a prayer has been made that the directions be issued to the respondents to re-instate him in service along-with all consequential benefits including back-wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, delay and latches etc. On merits, it has been asserted that the petitioner was engaged as beldar on muster roll basis in Electric Sub Division HPSEBL Dhalli during March, 1992 and remained in the job upto Jan., 1993 in different brief spells and he worked only for 201 days and thereafter he left the work at his own without any intimation, and no junior persons were engaged by the respondents except only few workers who were re-engaged on daily wages with respondent on specific judicial order of competent Court, hence there is no violation of the provisions of section 25-B, 25-F, 25-G and 25-H of the Act. It is denied that the petitioner had completed 240 days of service and that he visited the HPSEB authorities for his re-engagement. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 3.10.2016:—

1. Whether the termination of the services of petitioner during Jan., 1993 by the respondents is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled? . .*OPP.*

3. Whether the present claim petition is not maintainable as alleged? . .*OPR.*

4. Whether the petition is hit by the vise of delay and latches as alleged? . .OPR.

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No.

Issue No.2 Becomes redundant.

Issue No.3 No.

Issue No.4 Yes.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues No.1 & 4 :

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondents contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the detail of the workers Ex. PW-1/B. In crossexamination, he admitted that he was engaged by the Board on 3-3-1992 on muster roll basis and he had worked till 20-1-1993. He denied that he had worked only for 201 days. He further denied that his services were never terminated and he had left the job at his own. He also denied that he had not completed 240 days in any calendar year and that no junior persons were retained by the Board. He admitted that some juniors have been re-engaged upon the orders of the Court. He further admitted that he had raised the industrial dispute after 22 years.

12. PW-2 Yoginder Singh, Senior Assistant has stated that the petitioner was engaged as beldar on 3-3-1992. He further stated that the provisional seniority list of T/Mate (regular) in Shimla Electric Division no.1 is mark PX and some of the persons mentioned in the same are juniors to the petitioner and they have been regularized. In cross-examination, he stated that the petitioner had worked for 201 days in total *w.e.f.* 3-3-1992 to 20-1-1993 and he had not completed 240 days in any calendar year. He also stated that the juniors have been retained upon the orders of the Court.

13. On the other hand, the respondents have examined one Shri Surender Pal Sharma, Assistant Engineer as RW-1, who deposed that the petitioner was engaged as Beldar on 3-3-1992 at Sub Division Dhalli and he worked only for 201 days till 20-1-1993. The copy of mandays chart of the petitioner is Ex. RW-1/A and he had left the job at his own. He further stated that the petitioner had not completed 240 days in any calendar year and no junior of the petitioner was retained by the board and no fresh hands have been engaged. The petitioner has raised the Industrial Dispute after about 19 years. In cross-examination, he admitted that neither any notice was given to the petitioner nor any compensation was given to him. He denied that the petitioner had written many letters to the board for his reinstatement. He admitted that many persons shown in Ex. PW-1/B, have been

engaged as Beldar after the year, 1995 and some of them have been regularized. He denied that the petitioner had not left the job at his own and that he had been visiting their office repeatedly for his re-instatement and despite that his case was not considered. He also denied that the petitioner has completed 240 days in each calendar year.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 201 days as daily waged Beldar with the respondents during the entire period *w.e.f.* 3-3-1992 till 20-1-1993 as per the mandays chart Ex. RW-1/A. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. Undisputedly, the petitioner had raised his industrial dispute after a period of about 20 years. According to the petitioner he was terminated during 1993. He has admitted in crossexamination that he had raised the industrial dispute after about 22 years. Therefore, the position of law in respect of a stale claim is required to be seen.

16. In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under :

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

17. In Assistant Executive Engineer, Karnataka Vs. **Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may

be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. ***In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service w.e.f. 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15" In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5." The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case

of Ajaib Singh *v.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054: JT (1999) 3 SC 38].

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In

fact it could be said that there was no dispute pending at the time when the reference in question was made."

(*Emphasis supplied*).

19. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation *Vs.* Babu Ram, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon"ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under :

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. In Assistant Engineer, CAD Kota Vs**. Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

21. In UP State Road Transport Corporation Vs. **Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making

repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

22. In (2009) 13 SCC 746, State of Karnataka Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

23. In a recent judgment of our **Hon'ble High Court delivered in CWP no. 1912 of 2016 titled as Bego Devi** Versus **State of HP and others decided on 26.10.2016**, it has been held as under:

"9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations is not sufficient to explain the delay.

25. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during Jan., 1993 and he raised the present dispute after about a period of 20 years. In his affidavit by way of evidence Ex. PW-1/A, the petitioner deposed that while terminating his services the employer had given assurance to him that on the availability of work and funds, he would be re engaged for the same work but despite assurance given by the respondents, he was not reinstated. However, except for his bald statement there is no other evidence on record to suggest as to when he visited the respondents for his reinstatement. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondents for his reengagement during the period of 20 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 20 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. On merits, from the mandays chart Ex. RW-1/A, it is clear that the petitioner was engaged as daily waged Beldar by the respondents on 3-3-1992 and he worked as such till 20.1.1993. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. The perusal of mandays chart Ex.RW-1/A goes to show that the petitioner had worked only for 201 days with the respondents during the entire aforesaid period. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon"ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat*** *V/s* ***Dayabhai Amar Singh, the*** Hon"ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

27. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in their reply but they have totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 20 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 20 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 20 years as the delay in the present case is certainly fatal.

28. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors and had engaged fresh hands who are still working as such the respondents had violated the principles of "last come first go". In his deposition, the petitioner has also tendered in evidence the detail of the workers Ex. PW-1/B. The learned counsel for the petitioner also invited my attention to the cross-examination of RW-1 wherein he had admitted that many persons shown in Ex. PW-1/B have been engaged as Beldar after the year, 1995 and some of them have been regularized. However, as observed earlier, the petitioner had raised the demand notice after a period of 20 years as such there is no question of consideration of equal treatment with the junior persons who have been shown in Ex. PW-1/B. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP no. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 20 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 20 years.

29. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 20 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue No.2 :

30. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue No.3 :

31. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable.

Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 19th Day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 03 of 2016

Instituted on 1-1-2016

Decided on 29-7-2017

Ram Chander s/o late Shri Chet Ram R/o Village & P.O Shakra, Tehsil Karsog, District Mandi, HP. . .*Petitioner.*

Vs

1. The Resident Engineer, HPSEB Ganvi Power House, Division Jeori, Tehsil Rampur, District Shimla, HP.

2. The Executive Engineer, HPSEB, Ganvi, Tehsil Rampur, District Shimla, HP.

3. The Assistant Engineer, HPSEB Sub Division Chaba, Tehsil Sunni, District Shimla, HP. . .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Vasu Sood, Advocate.

For respondents : Shri Sudhir Negi, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"**Whether termination of the services of Shri Ram Chander s/o Late Shri Chet Ram, r/o Village & P.O. Shakra, Tehsil Karsog, Distt. Mandi, H.P. by the Resident engineer, Ganvi Power House Division, H.P.S.E.B. Ltd. Jeori, Tehsil Rampur, Distt. Shimla, H.P.** w.e.f. **25-11-1993 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of more than 18 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that *w.e.f.* 1-1-1992, he was appointed as Beldar on daily wages basis with the respondents and worked till December, 1998 and thereafter his services were orally terminated without complying with the provisions of section 25-F the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the petitioner had worked at various places under respondents and even after his illegal termination, the respondents had engaged many fresh persons and had retained many juniors to him in violation of the provisions of sections 25-G and 25-H of the Act. It is also stated that the petitioner had completed 240 days in twelve calendar months preceding to the date of his oral and illegal termination and that the petitioner made several requests seeking re-employment by visiting the office of the respondents number of times but despite assurance, he was not re-engaged. That the appropriate government referred the dispute to this Court after the judgment passed by the Hon'ble High Court in CWP no.

4328/2015. Against this back-drop a prayer has been made that directions be issued to the respondents to re-instate the petitioner in service along-with all consequential benefits including back-wages, seniority, continuity and regularization.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken that the petitioner has not approached this Court with clean hands, that the petition is hopelessly time barred, maintainability and estoppel. On merits, it has been asserted that the petitioner is seeking legal remedy with the sole motive of re-engagement after a lapse of 19 years by concealing the fact and leveling false allegations. The petitioner had left the job at his own will as such no notice was required to be served as he had worked only for 26 days *w.e.f.* 25-10-1993 to 24-11-1993. It is further asserted that the petitioner was a casual labourer and could not covered into temporary workman as he had not fulfilled the criteria of 240 days and even no junior to him had been retained. The respondents prayed for the dismissal of the claim petition.

4. By filling rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 5.9.2016.

1. Whether the termination of the services of petitioner *w.e.f.* 25.11.1993 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the claim is not maintainable as alleged? . .*OPR.*

4. Whether the present petition is barred by limitation as alleged? . .OPR.

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No

Issue No.2 Becomes redundant

Issue No.3 No

Issue No.4 Yes

Relief. Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues no.1 & 4 :

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondents contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even he had not completed 240 days in preceding twelve months. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

11. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he denied that he had worked *w.e.f.* 25-10-1993 to 24-11-1993 and the respondents had engaged him for a specific work. He further denied that he had not completed 240 days in any calendar year and that he had left the job at his own and the respondents had never terminated his services. He admitted that the demand notice was raised by him after a period of 18 years.

12. On the other hand, the respondents examined one Shri Jagdish Chand, Junior Engineer, as RW-1 who deposed that the petitioner was engaged as daily waged Beldar on muster roll basis *w.e.f.* 25-10-1993 till 24-11-1993, the copy of muster roll is Ex. RW-1/A and he had worked for only 26 days in the year, 1993. He further deposed that the petitioner had never completed 240 days and no junior has been retained and no fresh hands have been engaged. He also deposed that the services of the petitioner have never been terminated and he had left the job at his own. In cross examination, he admitted that the petitioner was terminated orally. He also admitted that no letter has been issued to the petitioner for resumption of his duties. He denied that the petitioner had completed 240 days in a calendar year. He admitted that the petitioner has filed a writ petition before the Hon'ble High Court and Ex. PZ is the copy of order dated 18.11.2015.

13. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 26 days in the year 1993 as per the muster roll Ex. RW-1/A. It is also clear from the record that the present dispute was raised by the petitioner after about 18 years. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

14. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 18 years. According to the petitioner he was engaged by the respondents in the month of Jan., 1992 and worked as such till December, 1998. He has admitted in cross-examination that he had raised the demand notice after about 18 years. Therefore, the position of law in respect of a stale claim is required to be seen.

15. In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D. Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

16. In Assistant Executive Engineer, Karnataka *Vs.* Shivalinga reported in (2002) 10 SCC 167, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon"ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

17. *In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91,* the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High

Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under :

> 13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."
>
> 14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT[2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan alias Pappu Yadav & Anr. para 42."
>
> 15. In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :
>
> > 5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *v.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].
> >
> > 6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

> "6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice.

Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (*Emphasis supplied*).

18. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. **Babu Ram**, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under :

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

19. In Assistant Engineer, CAD Kota Vs. **Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30% back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

> "9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

20. In **UP State Road Transport Corporation** Vs. **Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> " 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

21. In (2009) 13 SCC 746, State of Karnataka Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

22. In a recent judgment of our **Hon'ble High Court delivered in CWP no. 1912 of 2016 titled as Bego Devi *Versus* State of HP and others decided on 26.10.2016**, it has been held as under:

> "9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

23. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations is not sufficient to explain the delay.

24. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. As per the reference, the services of the petitioner were stated to be terminated *w.e.f.* 25.11.1993 and he raised the present dispute after about a period of 18 years. In his evidence by way of affidavit Ex. PW-1/A, the petitioner as PW-1 has stated that the employer had given assurance to him that on the availability of work and funds, he would be re-engaged for the same work. However, except for his bald statement there is no other evidence on record to suggest as to when he approached the respondents for his reinstatement. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondents for his re-engagement during the period of 18 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 18 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

25. The learned counsel for the petitioner next contended that since the petitioner had completed 240 days in a calendar year, it was necessary for the respondents to have complied with the provisions of section 25-F of the Act. As per the muster roll Ex. RW-1/A, the petitioner had worked only for 26 days in the year, 1993. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his alleged termination. There is no material on record which could show that the petitioner has completed 240 working days in any calendar year or in twelve calendar months preceding his termination. The perusal of muster roll Ex. RW-1/A goes to show that the petitioner had worked only for 26 days with the respondent during the year, 1993. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

26. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in their reply but they have totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 18 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 18 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 18 years as the delay in the present case is certainly fatal.

27. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors and had engaged fresh hands who are still working as such the respondents had violated the principles of "last come first go". In his affidavit Ex. PW-1/A, the petitioner has also stated that after the termination of his services, the respondents have retained the juniors and engaged fresh hands and under para no. 5 of the affidavit Ex. PW 1/A, he has mentioned the names of his alleged juniors/fresh persons. But in support thereof no specific evidence has been led by the petitioner. Moreover, our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** has held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 18 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of Sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 18 years.

28. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 18 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, all these issues are answered accordingly.

Issue No.2.

29. Since, the petitioner has failed to prove Issue No.1, above, this issue becomes redundant.

Issue No.3 :

30. In support of this issue, no evidence was led by the respondents which could go to show that as to how the petition is not maintainable in the present form. Moreover, the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication, hence, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 29th Day of July, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref No. 53 of 2016

Instituted on 17-6-2016

Decided on 19-7-2017

Hoshiar Singh son of Sh. Hima Ram, aged about 40 years, r/o Village & P.O. Ogli, Tehsil Sunni, District Shimla-171019, H.P. . .*Petitioner.*

Vs

The Divisional Forest Officer, Forest Division Shimla, District Shimla, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Neel Kamal Sood, Advocate

For respondent : Ms. Reena Chauhan, Dy. DA

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Hoshiar Singh S/O Sh. Hima Ram, r/o V.P.O. Ogli, Tehsil Sunni, Distt. Shimla, H.P. during August, 1996 by the

Divisional Forest Officer, Shimla, who had worked as beldar on daily wages only for 59 days in the year 1996 and has raised his industrial dispute after about more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 59 days in the year 1996 and delay of more than 13 years in raising the Industrial Dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that he was appointed as Class-IV employee on daily wages basis with the respondent *w.e.f.* 1996 and worked at various places under respondent for about one year and thereafter his services were orally terminated without any reason and without serving any prior notice as required under the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is further stated that the respondent had engaged many fresh persons after the illegal termination of the petitioner and juniors to him namely Molak Ram and Bhim Singh were also retained in violation of the provisions of Sections 25-G and 25-H of the Act. The petitioner had completed 240 days in twelve calendar months and that he made several requests seeking re-employment by visiting the office of the respondent but of no avail. Against this back-drop a prayer has been made that directions be issued to the respondent to re-instate the petitioner in service along-with all consequential benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability and barred by limitation. On merits, it has been asserted that the petitioner was initially engaged as casual labourer on seasonal forestry work in the Range Forest Office Bhajji of Shimla Forest Division during the year, 1996 as per availability of work and funds and he worked only for 59 days with the respondent and thereafter he left the work at his sweet will and never reported to work. It is further asserted that the petitioner had not completed 240 days in any calendar year and he was not engaged against the cadre post, hence, the provisions of Section 25-F and 25-B have not been violated by the respondent. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 21.11.2016.

1. Whether the termination of the services of petitioner by the respondent during August, 1996 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If Issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the claim is not maintainable as alleged? . .*OPR.*

4. Whether the claim is barred by limitation as alleged? . .*OPR.*

5. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No

Issue No.2 Becomes redundant

Issue No.3 No

Issue No.4 Yes

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues No.1 & 4 .

7. Being interlinked and correlated, both these issues are taken up together for decision.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 240 days in a calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of Section 25-G and 25-H of the Act.

9. On the other hand, learned Dy. DA for the respondent contended that the claim of the petitioner is highly belated and stale. She further contended that the services of the petitioner had never been engaged in a cadre post but he was engaged as a casual labourer on seasonal forestry works as per the availability of work and funds and he had left the job at his own and even he had not completed 240 days in any calendar year. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

10. To prove Issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the list of daily waged workers who have completed 8 years of continuous service Ex. PW-1/B and certified copy of judgment of Hon'ble High Court in CWP No. 17 of 2016 Ex. PW-1/C. In cross-examination, he denied that he had only worked for 59 days in the year, 1996. He further denied that he had left the job at his own and his services were never terminated by the respondent. He also denied that he had not completed 240 days in any calendar year. He admitted that the persons mentioned in the list Ex. PW-1/B have worked for 240 days in each calendar year and had completed 8 years of service. He further admitted that he had raised the demand notice after 13 years. He denied that no junior persons have been retained by the department and no fresh hands have been engaged.

11. On the other hand, the respondent examined one Shri Ramesh Chand Range Forest Officer, as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the mandays chart Ex. RW 1/B, letter dated 17.8.2011 Ex. RW-1/C and copy of judgment passed by the Hon'ble High Court Ex. RW-1/D. In cross-examination, he denied that the petitioner was engaged as beldar from June 1996 till 28.2.1997. He further denied that the petitioner had worked for 270 days in a calendar year. He admitted that no notice was issued and no compensation was given to the petitioner. He admitted that many juniors were retained and many fresh hands have been engaged after the year,

1996 and some of them have been regularized as per the criteria of the Government. He further admitted that the persons mentioned at serial number 8 till serial number 23 of Ex. PW-1/B have been regularized.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 59 days as daily waged beldar with the respondent during the year 1996 as per the mandays chart Ex. RW-1/B. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. Undisputedly, the petitioner had raised his industrial dispute after a period of about 13 years. He has admitted in cross-examination that he had raised the demand notice after 13 years. Therefore, the position of law in respect of a stale claim is required to be seen.

16. In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota *Vs.* Mohan Lal, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

17. In Assistant Executive Engineer, Karnataka *Vs.* Shivalinga reported in (2002) 10 SCC 167, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and

records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. ***In Haryana State Coop. Land Development Bank*** *Vs.* ***Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be Deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT [2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15 "In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matter which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (*Emphasis supplied*).

19. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. **Babu Ram**, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

> "10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. In Assistant Engineer, CAD Kota Vs. **Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30% back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

> "9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

21. In UP State Road Transport Corporation Vs. **Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> " 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

22. In (2009) 13 SCC 746, State of Karnataka Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

23. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of H.P. and others decided on 26.10.2016**, it has been held as under:

> "9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations is not sufficient to explain the delay.

25. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during August, 1996 and he raised the present dispute after about a period of 13 years. In his affidavit by way of evidence Ex. PW-1/A, the petitioner deposed that while terminating his services the employer had given him assurance that on the availability of work and funds, he would be re engaged for the same work but despite assurance given by the respondents, he was not reinstated. However, except for his bald statement, there is no other evidence on record to suggest as to when he visited the respondent for his reinstatement. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 13 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 13 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. On merits, from the mandays chart Ex. RW-1/B, it is clear that the petitioner was engaged as daily waged beldar by the respondent during June, 1996 and he worked as such till August, 1996. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his

termination. The perusal of mandays chart Ex. RW-1/B goes to show that the petitioner had worked only for 59 days with the respondent during the entire aforesaid period. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh,*** the Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under Section 25-F of the Industrial Disputes Act, 1947 and as such no protection of Section 25-F can be granted to the petitioner.

27. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". In his deposition, the petitioner has also tendered in evidence the list of daily waged workers who have completed 8 years of continuous service Ex. PW-1/B. The learned counsel for the petitioner also invited my attention to the cross-examination of RW-1 wherein he had admitted that many juniors were retained and many fresh hands have been engaged after the year, 1996 and some of them have been regularized as per the criteria of the government. However, as observed earlier, the petitioner had raised the demand notice after a period of 13 years as such there is no question of consideration of equal treatment with the persons who have been shown in Ex. PW-1/B. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP no. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 13 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of Sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 13 years. Moreover, RW-1 specifically stated in his affidavit Ex. RW-1/A, that the petitioner was engaged as a casual labourer on seasonal forestry works and he was never engaged in any cadre post. It was held by the Hon'ble Supreme Court in ***Reserve Bank of India V. Gopinath Sharma & Anr (2006) 6 SCC 221,*** that workman not appointed to any regular post but engaged on

the basis of need of work on day to day basis, had no right to the post. Hence, in view of the aforesaid judgment of the Hon'ble Apex Court, the petitioner had no right to the post since he was not appointed to any regular post.

28. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 13 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue No.2.

29. Since, the petitioner has failed to prove Issue No.1, above, this issue becomes redundant.

Issue No.3.

30. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable.

Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 19th Day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

1.7.2017.

Present: None for the petitioner.

Shri Rahul Singh, Advocate for respondent.

Case called twice but none appeared on behalf of the petitioner. It is 10: 40 AM.

Be awaited.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Case called again

Present: None for the petitioner.

Shri Rahul Singh, Advocate for respondent.

Case called again but none appeared on behalf of the petitioner. It is 12: 30 PM.

Be called after lunch.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Case called after lunch.

Present: None for the petitioner.
Shri Rahul Singh, Advocate for respondent.

It is 3.25 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for filing of reply on behalf of the respondent but none appeared on behalf of the petitioner. Hence, to issue notice again to the petitioner in order to appear before this Court and to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

"Whether the termination of the services of Shri Rajiv Kumar, resident of C/o Nirmal Singh Village Bangla Beli, P.O. Kharoni, Tehsil Nalagarh, District Solan, H.P. (present

address) and Set No.15, Qrs. No.6/A, Post Chittranjan, District Burdwan (West Bengal)-713331, who was employed as senior operator and drawing salary Rs. 40,000/- per month by the Managing Director, M/s Super Multicolor Prints Pvt. Limited, (Folding Carton), Village Kishanpur, Baddi, Nalagarh Road, District Solan, H.P. *w.e.f.* 1.8.2014 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to from the above employer/management?"

From the aforesaid reference is the clear that the petitioner has alleged his termination *w.e.f.* 1.8.2014 to be illegal but for today none appeared on behalf of the petitioner which seems that he is not interested to pursue the present claim. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent *w.e.f.* 1.8.2014. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Shri Ram Chander V/S M/s Vallabh Strips Kala Amb Ref. No. 15/2015

26.07.2017

Present: Petitioner with Sh. Vikram Thakur, Advocate
Sh. Vikram Jain, Partner M/s Vallabh Strips with
Sh. Pankaj Sharma, Advocate.

At this stage *vide* separate statement recorded today Sh. Vikram Jain, Partner of the respondent has stated that he is ready and willing to pay a sum of Rs. 45,000/- (Forty Five thousand) only towards full and final settlement of the claim arising out of the reference number 15/2015 within a period of one month and the reference petition may be decided accordingly.

Vide separate statement recorded today the petitioner has stated that he is ready and willing to accept a sum of Rs. 45,000/- (Forty Five Thousand) only towards full and final settlement of the claim arising out of the reference number 15/2015. He further stated that he shall have no claim thereafter with respect to the present claim and the reference petition may be decided accordingly.

Therefore, in view of the aforesaid statements of the parties, the reference is disposed of as compromised. The respondent is directed to make the payment of Rs. 45,000/- (Forty Five Thousand) only to the petitioner within a period of one month from today otherwise the same shall carry interest @ 9% per annum from the date of the award till its realization. The statements of

parties shall form a part of the award/order. Let a copy of this award/order be sent for publication in the official gazette. File, after completion be consigned to records.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)

14.7.2017.

Present: None for the petitioner.
Shri Pankaj Chauhan, Advocate vice-csl. for respondents

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for filing of rejoinder and framing of issues but neither the petitioner nor his counsel appeared before this Court which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference, hence, to further adjourn the case would be a futile exercise. Therefore, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

"**Whether alleged termination of services of Sh. Gian Chand Sharma S/o Lt. Sh. Sant Ram Sharma, Village Shilru, P.O. Panesh, Tehsil & Distt. Shimla, H.P. during November, 2002 by the Managing Director, H.P. State Agriculture Marketing Board, Vipnan Bhawan, Khalini, Shimla-2. H.P., who had worked as daily paid Clerk from 1995 to 2002 without any break and has raised his industrial dispute after about 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of continuous working period of 1995 to 2002 and delay of about 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex worker is entitled to from the above employer?"**

From the aforesaid reference is the clear that the petitioner has alleged his termination during November, 2002 to be illegal and unjustified. The aforesaid reference also makes it clear that the petitioner had raised the present dispute after about 12 years which seems that the petitioner is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during November, 2002. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

SUSHIL KUKREJA,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 69 of 2015

Instituted on 1.10.2015

Decided on 6.7.2017

Rattan Singh s/o Shri Chuha Ram, r/o Village Makkar, P.O Balhara, Tehsil Khundia, District Kangra, H.P. . .*Petitioner.*

Vs.

M/s A& A Moduler System, 149-150, Village Sainsiwala, Barotiwala, District Solan, H.P. through its Managing Director. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K Khidtta, Advocate

For respondent : Shri Satish Kumar, Advocate *vice* Shri I.S Narwal, Advocate

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Sh. Rattan Singh s/o Sh. Chuha Ram, Village Makkar, P.O. Balhara, Tehsil Khundia, Distt. Kangra, H.P. *w.e.f.* 28-5-2014 by the Managing Director, M/s A & A Moduler System, 149-150, Village- Sainsiwala, Barotiwala, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified? If not, to what relief of reinstatement, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that on 1-11-2007, he was engaged as security guard by the respondent company and worked as such till 21-7-2013. It is further stated that on 7-7-2013 , the petitioner went on sanctioned leave till 22-7-2013 but during the leave period, he fell ill and remained ill till 12-8-2013 and due intimation regarding illness was given to the respondent company and on 13-8-2013, the petitioner joined his duties and he was called by the Factory Manager at about 10.30 AM and asked that he (petitioner) remained absent without any reason from the duty upon which the petitioner told that he remained ill and submitted his medical but the same was not accepted by the factory manager and further asked the petitioner to give in writing that the company can take any action against him otherwise he has to go out from the company but the petitioner refused to gave in writing as desired by the respondent company as his absence from duty was not intentional but was due to illness and his services were terminated *w.e.f.* 13-8-2013. It is further asserted that due to the illegal termination of the services of the petitioner by the respondent company, he was forced to file the demand notice before the Labour-*cum*-Conciliation Officer, Baddi on 14-8-2013 and the company was called by the Conciliation Officer and ultimately a compromise was arrived at between the parties as per which the respondent company agreed to take back the petitioner without any condition and that thereafter the petitioner joined his

duties but the respondent company on 8-10-2013 handed over the show cause-*cum*-suspension letter to the petitioner on the earlier allegation leveled upon him which was duly replied by the petitioner and after receiving his reply, the respondent company appointed Hardesh Sharma as enquiry officer and the request of the petitioner regarding the appointment of enquiry officer from the company was refused. It is also stated that before starting the enquiry, the enquiry officer did not explain anything to the petitioner regarding the procedure to be adopted in the enquiry and right from the very first day, the enquiry officer started favouring the company and had not appreciated the version of the petitioner and even the enquiry officer acted as per the wishes of the company. That after the enquiry, the company issued show cause notice to the petitioner which was duly replied by him and ultimately, his services were terminated *vide* letter dated 26-5-2014 and even the petitioner requested the respondent company to cancel his dismissal and allow him to work in the company but of no avail and thereafter he filed demand notice against his termination order dated 26-5-2014 before the Labour-*cum*-Conciliation Officer, Baddi but due to adamant attitude of the company conciliation proceedings failed. It is stated that the enquiry conducted by the respondent company through its enquiry officer is totally illegal and contrary to the provisions of standing orders and also against the principles of natural justice as the enquiry officer did not allow the petitioner to defend his case through co-worker as he was not aware about the procedure and technicalities of the enquiry and even during the enquiry no proper opportunity was afforded to the petitioner. Since, the petitioner had worked continuously with the company and had completed 240 days in each calendar year, hence, his services cannot be terminated in an illegal manner without companying with the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred as to Act). That the petitioner is unemployed from 26-5-2014 and is nowhere gainfully employed, hence, the company is bound to pay full salary to him *w.e.f.* 26-5-2014 till his re-engagement and even the company has no right/power to terminate the services of the petitioner on the same ground/allegation which stood already settled. Against this back-drop a prayer has been made that the impugned dismissal order dated 26.5.2014 be quashed and set aside and the respondent company be directed to re-instate the petitioner in service with all service benefits including back wages. It is further prayed that the respondent be burdened with the cost of litigation amounting to ₹ 30,000/- with damages amounting to ₹ 50,000/-.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been raised that the petition is neither competent nor maintainable, that the claim petition is vague and does not disclose any cause of action against the respondent, that the petitioner is working in another establishment since September, 2013 etc. On merits, it has been asserted that the petitioner has already attained the age of superannuation and there has been grave misconduct on the part of the petitioner as he remained absent from the work *w.e.f.* 22-7-2013 to 13-8-2013 without any intimation or prior sanction from the company. It is denied that the petitioner remained ill and submitted his medical but the same was not accepted by the Factory Manager. It is asserted that on 13-8-2013, the petitioner had not given any medical record to show that he remained ill *w.e.f.* 22-7-2013 to 12-8-2013 and he later on submitted such record when he was served with a notice dated 8.10.2013 which casts doubt on him and even the petitioner refused to receive the show cause notice dated 13-8-2013 and threatened the officials of the company with dire consequences and the petitioner also refused to receive the show cause notice dated 5-10-2013 and 7-10-2013. It is further asserted that the petitioner was in the habit of misbehaviour and misconduct in the company earlier and the company warned him for such misconduct and misbehavior in the factory as there was a complaint dated 25-2-2012 against him upon which show cause notice 26-5-2012 was issued which was replied by the petitioner *vide* reply dated 26-5-2012 and then a warning letter dated 12-2-2013 was issued to him by the company. It is denied that the allegations leveled upon the petitioner stands already settled before the Conciliation Officer. It is also asserted that after receiving the reply dated 9-10-2013 filed by the petitioner, the respondent company decided to get through inquiry in this regard from some neutral person and as such Shri Hardesh Sharma was appointed as an enquiry officer *vide* letter dated 10.10.2013, who *vide* its

letter dated 12-10-2013 issued the letter of information to the petitioner and the enquiry officer dealt the matter in accordance with law and proper opportunities of being heard was afforded to petitioner and conducted the enquiry properly. Since the work and conduct of the petitioner was not satisfactory, hence, he was dismissed from service after holding a fair enquiry and even the petitioner has already completed 58 years of age and attained the age of superannuation, hence, he has no locus-standi to file the present case and even the company had already cleared all his dues which comes to ₹ 14798/-. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 3.8.2016.

1. Whether the termination of the services of the petitioner *w.e.f.* 26.5.2014 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is neither competent nor maintainable as alleged? . .*OPR.*

4. Relief.

6. Besides having heard the Learned Counsel for the parties, I have also gone through the record of the case carefully including written arguments filed by the petitioner.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under :

Issue No.1 Yes.

Issue No.2 Entitled to lump sum compensation of ₹ 50,000/- (₹ Fifty Thousand only)

Issue No.3 No.

Relief Reference answered in favour of the petitioner and against the respondent.

Reasons for findings

Issue No.1.

8. The petitioner while appearing into the witness box as PW-1 has tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence demand notice Ex. PW-1/B, copy of settlement Ex. PW-1/C, charge-sheet-*cum*-suspension letter Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, termination letter Ex. PW-1/F, letter regarding domestic enquiry Ex. PW-1/G and demand notice dated 27-5-2014 Ex. PW-1/H. In cross-examination, he admitted that he had furnished the information mentioned in the ESI certificate, the copy of which is mark X-1 in which his date of birth is mentioned as 15-4-1956. He denied that after 22-7-2013, when his leaves were over, he had not given any information regarding absence from duty and that the respondent had not sanctioned his

leave. He further denied that the respondent had issued show cause notice dated 13-8-2013 regarding his absence from duty and that he had not submitted any medical record on 13-8-2013 with respect to his absence from duty and that he had submitted the medical record on 8-10-2013. He admitted that show cause notice dated 8-10-2013 Ex. PW-1/D, was issued to him by the company to which he filed reply Ex. PW-1/E. He denied that on 13-8-2013, when he joined the company he threatened the officials of the company with dire consequences. He further denied that prior to 8-10-2013, the company also issued him show cause notices dated 5-10-2013 and 7-10-2013. He admitted that he had refused to accept the aforesaid show cause notices in the presence of Mr. S.S Sankhyan. He denied that on 25-5-2012, Mr. B.S Rana, Security Supervisor had made a complaint against him but admitted that on the aforesaid complaint, the company issued show cause notice dated 26-5-2012 to him. He admitted that he had filed the reply to the aforesaid show cause notice. He denied that the enquiry officer had conducted the enquiry in a proper manner. He admitted that he had not submitted any objection in writing and that the enquiry was conducted in his presence. He further admitted that the management witnesses were cross examined by him. He also admitted that he had not made any statement in his defence before the enquiry officer. He admitted that the enquiry officer had given findings against him and submitted his enquiry report and thereafter his services were terminated on the basis of the same.

9. On the other hand, the respondent examined RW-1 Shri Pushp RaJ, who deposed that the petitioner was working as a guard with the respondent since 1-11-2007 and he proceeded on leave *w.e.f.* 7-7-2013 to 22-7-2013 and had not reported for work after 22-7-2013 and joined the duties on 13-8-2013. He further deposed that the petitioner remained absent from 23-7-2013 to 12-8-2013 without sanction of any leave and when he joined his duties on 13-8-2013, he did not submit any medical certificate, hence, he issued a show cause notice to him on 13-8-2013 regarding his absence but he had refused to receive the same. Thereafter he issued him another notice Ex. RW-1/A on 5-10-2013 and again on 7-10-2013, a notice was issued to him but he had refused to receive the same. The work and conduct of the petitioner was not satisfactory and respondent had issued him show cause notice dated 26-5-2012 Ex.RW-1/B which was replied by him *vide* EX.RW 1/C. Compliant Ex. RW-1/D was given against the petitioner by Security Supervisor and on 12-2-2013 a warning letter Ex. RW-1/E was issued to him. He further deposed that the petitioner made a complaint before the Labour Officer on 14-8-2013 which was replied by the respondent *vide* Mark-X. The petitioner was suspended on 8-10-2013 and a chargesheet was issued to him on the same date which was replied by him on 10-10-2013 and thereafter a domestic enquiry was initiated against him and Mr. Hardesh Sharma, Advocate was appointed as an enquiry officer. The petitioner participated in the enquiry and the enquiry officer submitted his enquiry report Ex. RW 1/F *vide* which the charges against the petitioner stood proved and thereafter second show cause notice was issued to him. On the basis of enquiry report, the services of the petitioner were terminated *vide* termination letter Ex. PW-1/F. In cross-examination, he admitted that the petitioner was engaged by the respondent on 1-11-2007 and he worked continuously upto 21-7-2013. He further admitted that the petitioner had completed 240 days in each calendar year and that he was on leave *w.e.f.* 7-7-2013 to 22-7-2013 which was duly sanctioned. He denied that during his leave period the petitioner fell ill and he intimated the respondent. He admitted that the petitioner came to join his duty on 13-8-2013. He denied that petitioner submitted his medical certificate before the Factory Manager but he refused to the same. He admitted that before the Labour Officer a compromise PW-1/C was arrived at between the parties. He denied that the petitioner has objected to the appointment of Hardesh Sharma Advocate as an enquiry officer. He further denied that the petitioner has given a letter Ex. PW-1/G to the management. He also denied that the petitioner was not allowed to be represented by a co-worker or advocate and that the enquiry officer has not explained the procedure before commencing the enquiry. He denied that the enquiry was not conducted in fair and proper manner by following the principles of natural justice and that the enquiry officer was not recording the version of the petitioner. He further denied that the petitioner

was not given an opportunity to lead his evidence in defence. He also denied that the services of petitioner were illegally terminated.

10. RW-2 Kamta Parsad Scocial Security Officer ESIC, Parwanoo has brought the summoned record and stated that the date of birth of the petitioner is 15-4-1956. The employee's registration form is Ex. RW-2/A and detail of the contribution made by the respondent is Ex. RW 2/B. In cross-examination he admitted that the birth certificate of the petitioner was not submitted to their department. He further admitted that the company uploads the data of the employees working with it.

11. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as security guard by the respondent company on 1-11-2007. It has also become clear that on 7-7-2013, the petitioner went on leave after it was duly sanctioned by the respondent company till 22-7-2013. The further case of the petitioner is that during the leave period, all of sudden he fell ill and he remained ill till 12-8-2013 and he had given due intimation of his illness to the respondent company. However, the case of the respondent is that the petitioner remained absent from duties *w.e.f.* 23-7-2013 to 12-8-2013 without sanction of any leave and he did not send any medical certificate during the aforesaid period and even on 13-8-2013 when the petitioner came to join his duties, he did not produce any medical certificate. It is also clear from the evidence on record that the petitioner was suspended on 8-10-2013 and a chargesheet was issued to him on the same date to which he filed reply on 10-10-2013 and thereafter a domestic enquiry was initiated against him and Shri Hardesh Sharma was appointed as an enquiry officer *vide* letter mark X-1 and the petitioner participated in the enquiry and enquiry officer submitted his enquiry report Ex. RW-1/F *vide* which the charges leveled against the petitioner stood proved. On 3-4-2014, 2nd show cause notice was issued to the petitioner along-with enquiry report and on the basis of the same, his services were terminated *vide* termination letter Ex. PW-1/F.

12. The learned counsel for the petitioner first contended that the allegations/charges leveled against the petitioner regarding his absence from duty *w.e.f.* 23-7-2013 to 12-8-2013 are totally wrong and false. He also contended that the petitioner never refused to accept any letter/show cause notice. However, this contention of the learned counsel for the petitioner is falsified by the own admission of the petitioner as while appearing in the witness box as PW-1, he admitted that the respondent had issued him show cause notices dated 5-10-2013 and 7-10-2013, Mark X-2 and Mark X-3 and he refused to accept the aforesaid show cause notices in the presence of Shri S.S Sankhyan. Moreover, except for the bald statement of the petitioner, there is no evidence on record to suggest that the charges leveled against the petitioner are false and baseless. The burden was upon the petitioner to prove by leading cogent and satisfactory evidence on record that the charges leveled against him vide chargesheet, are totally false and baseless. However, except for his bald statement, no evidence has been led by him to prove this fact. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the charges leveled against the petitioner are totally baseless and false.

13. The learned counsel for the petitioner next contended that the enquiry officer has not conducted the enquiry in a fair and proper manner and the principles of natural justice were also not followed during the enquiry proceedings. He further contended that the petitioner was not afforded proper opportunity to cross-examine the management witnesses and he was also not allowed to lead evidence in his defence. He also contended that the enquiry officer started favouring the respondent company and did not appreciate the version of the petitioner from the very beginning and no reasons were given by the enquiry officer while submitting his report. In **K.L Tripathi** Vs. **State Bank of India and ors. AIR 1984 SC 273** while dealing with the concept of natural justice in the back-drop of departmental proceedings, it has been held as under:

"It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed."

In Maharashtra State Board of Secondary and Higher Secondary Education Vs. **K.S. Gandhi and Others (1991) 2 SCC 716**, the Hon'ble Apex Court laid down that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. The relevant para of the aforesaid judgment is reproduced as under:

"37. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof, but inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish.……The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable.

The aforesaid decision was relied upon by the **Hon'ble Supreme Court in AIR 2005 S.C 570 titled as Cholan Roadways Ltd.** Vs. **G Thirugnanasambandam**, wherein it has been observed as under:

"17. There cannot, however, be any doubt whatsoever that the principle of natural justice are required to be complied with in a domestic enquiry. It is, however, well-known that the said principle cannot be stretched too far nor can be applied in a vacuum."

"18……."

19. It is further trite that the standard of proof required in a domestic enquiry vis-à-vis a criminal trial is absolutely different. Whereas in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative."

14. From the aforesaid decisions of the Hon'ble Supreme Court, it has become quite clear that in a domestic enquiry, the principles of natural justice are to be observed on certain parameters and the enquiry is to be fairly and properly conducted. That apart, the proof in a domestic enquiry stands on a different platform that is required in a court of law and strict rules of Evidence Act do not apply to domestic enquiry. Now, in the light of the aforesaid decisions of the Hon'ble Supreme Court, it has to be seen in the present case as to whether there was any violation of principles of natural justice in the enquiry held against the petitioner. In cross-examination, the petitioner

admitted that the enquiry officer Shri Hardesh Sharma intimated him regarding the enquiry *vide* letter dated 12-10-2013 mark X-9 and the enquiry was conducted in his presence. He also admitted that the management witnesses were crossexamined by him and he has not made any statement in his defence before the enquiry officer. He has not explained as to why he has not made any statement in defence. The petitioner also admitted that he had not submitted his complaint in writing to any authority regarding the conducting of enquiry in an unfair manner. The burden was upon the petitioner to establish by leading cogent and satisfactory evidence on record that the enquiry was not conducted in a fair and proper manner. However, except for the bald statement of the petitioner there is no evidence on record to suggest that the enquiry was not conducted by following the principles of natural justice. Rather the admission of the petitioner himself shows that the enquiry officer had conducted the enquiry in fair and proper manner and due opportunities were afforded to the petitioner to cross-examine the management witnesses.

15. The learned counsel for the petitioner further contended that the respondent company has not proved the enquiry report as the enquiry officer has not been examined as a witness as such the enquiry report Ex. RW-1/F cannot be read in evidence. However, this contention of the learned counsel for the petitioner is devoid of any force because the burden of proving a fact rests upon the party who substantially asserts the affirmative of the issue and not upon the party who denies it. In **Shankar Chakarvarti** Vs. **Britannia Biscuit Company Ltd. (1979) II LLJ 194**, the Hon'ble Apex Court observed that though the Adjudicatory Authorities under the Act have all the trappings of a Court, they are not hide-bound by the statutory provisions of the Evidence Act. Section 11(3) of the Industrial Disputes Act confers on them powers of a Civil Court under the Code of Civil Procedure only in respect of the matter specified therein. Such authorities are created for adjudication of industrial dispute between the parties arrayed before them. Their function being of a quasi-judicial nature, they have to adjudicate such disputes on the basis of pleadings of the parties and the evidence adduced before them in accordance with Rules of Natural Justice. Therefore, any party appearing before anyone of such authorities must make a claim or demur the claim of the other side. When there is a burden upon the party to establish a fact so as to invite a decision in its favour, it has to lead the evidence. The obligation to lead evidence to establish an averments made by a party is on the party making the averment. The test would be who would fail if no evidence is led. Such party, therefore, must seek opportunity to lead evidence.

16. In the present case, as observed earlier, the petitioner has failed to discharge his burden by proving that the enquiry was not conducted in a fair manner. Therefore, in the absence of any evidence on record on the part of the petitioner, it cannot be said that the enquiry report Ex. RW-1/F cannot be read in evidence as contended by the learned counsel for the petitioner. Moreover, I have gone through the enquiry proceedings and enquiry report Ex. RW-1/F, the perusal of which shows that fair and proper opportunity was granted to the petitioner to defend his case and proper reasonings have been given by the enquiry officer in support of his enquiry report. The learned counsel for the petitioner also cited the case law *i.e* 1963 LLJ, 367, 2015 LLR 1129, and 2017 LLR 113. However, the aforesaid judgments cannot be made applicable in the present case in the absence of any evidence on the part of the petitioner regarding the unfairness of the enquiry.

17. The learned counsel for the petitioner further contended that Shri Pushp Raj was the presenting officer in the enquiry and he has also appeared as a witness on behalf of the management in the enquiry as a result of which the enquiry proceedings stand vitiated. However, the learned counsel for the petitioner failed to produce any evidence on record to prove as to what prejudice has been caused to the petitioner if the presenting officer appeared as a management witness in the enquiry. Therefore, in the absence of proof of any prejudice, it cannot be said that the enquiry proceedings stand vitiated as contended by the learned counsel for the petitioner.

18. The learned counsel for the petitioner also contended that the allegations leveled against the petitioner regarding his absence from duty without any intimation were settled before

the Conciliation Officer and the petitioner was allowed to join the duties without any condition but after giving the joining by the petitioner, the respondent company re-opened the issue which is not justified under the law as no person can be tried twice for the same offence as it amounts to the violation of the principles of double jeopardy. It is the admitted case of the parties that the petitioner made a complaint before the Labour Officer on 14-8-2013 and the respondent had also filed a reply before the Labour Officer, the copy of which is mark X. As per the settlement Ex. PW 1/C, on 4-10-2013, the management had agreed to take back the petitioner in service in the conciliation proceedings before the Labour Inspector Baddi. However, the perusal of Ex. PW-1/C shows that the management had never agreed before the Labour Inspector Baddi that the disciplinary proceedings shall not be initiated against the petitioner for the misconduct committed by him by remaining willful absent for the period *w.e.f.* 23-7-2013 to 12-8-2013. Since, the petitioner was terminated on 13.8.2013 without conducting any enquiry therefore, he was taken back in service and the respondent was well within its right under law to initiate disciplinary proceedings against him by issuing show cause notice/chargesheet and then by conducting the domestic enquiry. The petitioner was never tried twice for the same offence. Since, as per the enquiry report, the allegations of misconduct stood proved against the petitioner his services were terminated after the issuance of 2nd show cause notice. Hence, it cannot be said that once the petitioner was allowed to join his duties, the respondent company could not have re-opened the issue as contended by the learned counsel for the petitioner.

19. The learned counsel for the petitioner lastly contended that the punishment of dismissal of the services of the petitioner is disproportionate to the gravity of misconduct. He also placed reliance upon the judgment reported in **2015 LLR 897 titled as Talukdar Singh** Vs. **Tata Engineering.** However, the aforesaid judgment is not applicable in the facts and circumstances of the present case as in the case before the Hon'ble Supreme Court the misconduct was regarding slapping of colleague during duty hours. However, in the present case the charges leveled against the petitioner *vide* chargesheet were regarding willful absence from duty, unauthorized extension of leave, disobeying the orders of superior officers and refusal for accepting of official communications. The charges against the petitioner stood proved and his services had been dispensed with *w.e.f.* 26-5-2014. In the opinion of this Court, the dismissal of a workman on the allegations leveled in the chargesheet is excessively high and grossly disproportionate to the gravity of misconduct. The charges leveled against the petitioner cannot be regarded as an act of grave misconduct. I**n (2005) 3 S.C.C 134, Mahindra and Mahindra Ltd.** Vs. **N.B Narawade,** it has been held by the Hon'ble Supreme Court that after introduction of Section 11–A in the Industrial Disputes Act certain amount of discretion is vested with the Labour Court/Tribunal in interfering with the quantum of punishment whereby the concerned workman is found guilty of the misconduct. The relevant portion of the aforesaid judgment is reproduced as under:

> "20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment." (*emphasis supplied*).

In the instant case, from the perusal of evidence on record, it has become clear that the petitioner has attained the age of superannuation on 14-4-2017. As per the record of ESIC the date of birth of petitioner is 15-4-1956 in the registration form Ex. RW-2/A. The petitioner also admitted in cross examination that he has furnished the information mentioned in the registration certificate. In para 3 of rejoinder to the reply of preliminary objections, the petitioner has admitted that he has completed 58 years of age and registered himself with ESIC. Therefore, it has become clear that the petitioner has attained the age of superannuation on 14-4-2017. The services of the petitioner were terminated *w.e.f.* 26-5-2014 *vide* termination letter Ex. PW-1/F after he attained the age of superannuation. Admittedly, the petitioner had been engaged as security guard and not in a sensitive post and this is not the case of dishonesty, misappropriation or using abusive language against the superior officers which require an extreme penalty of dismissal. Hence, in view of the entire evidence led by the parties and also in view of the facts and circumstances of the present case, this Court is of the opinion that the quantum of punishment imposed upon the petitioner was too harsh and wholly disproportionate to his act of misconduct. Therefore, looking into the charges leveled against the petitioner and keeping in view the fact that the petitioner has attained the age of superannuation, the punishment of dismissal of the services of the petitioner *w.e.f.* 26-5-2014 is hereby set aside and quashed. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No.2

20. Since, I have held under issue No.1 that the punishment of dismissal of the services of the petitioner is disproportionate to the gravity of misconduct, hence, it has to be seen as to what relief of service benefits the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

21. **In Jagbir Singh** Vs. **Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

> "It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

22. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement will not be possible in view of the fact that the petitioner has attained the age of superannuation. Therefore, in such a situation, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent. Since, the petitioner has put in more than five years of service with the respondent company, therefore, in such a situation, it would be quite reasonable and justified if lump sum compensation of ₹ 50,000/- (₹ Fifty Thousand

only) is awarded to the petitioner. Consequently, this issue is decided in favour of the petitioner and against the respondent.

Issue No.3.

23. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable.

Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent is directed to pay ₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation to the petitioner within a period of three months from today failing which the same shall carry interest @ 9% per annum from the date of award till its realization. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 6th Day of July, 2017.

SUSHIL KUKREJA,
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA, (H.P)**

M/s President/Generel Secretary M/s Su Kam Power System Ltd.

V/s

M.D. Su-Kam Power System Ltd. Ref. 112/2016

8.7.2017

Present: Shri Narender Kumar, Vice President of petitioner union
Shri Vijay Kumar Sharma, Assistant Manager HR for respondent

Today, a joint application for the withdrawal of the reference No. 112 of 2016 has been filed by the parties stating therein that the union has passed the resolution not to file claim in the reference because of the compromise with the management of respondent company.

Shri Narender Kumar, Vice President of the petitioner union has stated that *vide* resolution dated 6.7.2017, the workers union has entered into a settlement/compromise with the respondent company and the workers union does not want to pursue their case arising out of reference No. 112 of 2016. To this effect his statement recorded separately.

Vide separate statement, Shri Vijay Kumar Sharma, Assistant Manager, HR has accepted the aforesaid statement of Shri Narender Kumar Vice President to be correct.

Therefore, in view of the joint application filed today and also in view of the aforesaid statements of the parties, the reference is disposed off and the award is passed accordingly in terms of the statements of the parties which shall form a part of the award/order. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after, completion, be consigned to records.

Sd/-	Sd/-	Sd/-
(Sushil Kukreja)	(Dr.Sushma Kaushal)	(Dr. M.L. Kaushal)
Chairman	Member	Member

Lok Adalat

1.7.2017.

Present: None for the petitioner
Shri Surender Verma, Advocate for respondent

Reply filed. Case called twice but none appeared on behalf of the petitioner. It is 10.45 AM. Be awaited.

SUSHIL KUKREJA,
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA, (H.P)**

Case called again

Present: None for the petitioner.
Shri Surender Verma, Advocate for respondent

Case called again but none appeared on behalf of the petitioner. It is 12.35 PM. Be called after lunch.

SUSHIL KUKREJA,
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA, (H.P)**

Case called after lunch

Present: None for the petitioner
Shri Surender Verma, Advocate for respondent

It is 3.30 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. Hence, to issue notice again for the petitioner in order to appear before this Court and to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue her claim. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

"Whether termination of the services of Smt. Chander Kanta Thakur W/O Sh. Narender Thakur, Village-Banradu, P.O. Dhali, Tehsil & Distt. Shimla *w.e.f.* 29-08-2015 by the Employer/President, Shantialaya Trust, Rampur Keonthal, Distt. Shimla, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

From the aforesaid reference is the clear that the petitioner has alleged her termination *w.e.f.* 29-8-2015 to be illegal but for today none appeared on behalf of the petitioner which seems that she is not interested to pursue the present claim. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent *w.e.f.* 29-8-2015. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced
1-7-2017

SUSHIL KUKREJA,
Presiding Judge,
*H.P. Industrial Tribunal-*cum-*Labour Court, Shimla.*

वन विभाग

अधिसूचना

शिमला–2, 2 फरवरी, 2018

संख्याः एफ.एफ.ई.–बी–एफ (14)138 / 2014.––इस अधिसूचना में अन्तःस्थापित अनुसूची में विनिर्दिष्ट वन भूमि / बंजर भूमि में या उस पर, सरकार तथा प्राईवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की जांच कर ली गई है और उन्हें भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उपधारा (3) के अधीन यथा अपेक्षित अभिलिखित कर लिया है;

उक्त अनुसूची में दर्शित वन भूमि / बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा 29 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय–4 के उपबन्ध उक्त वन भूमि / बंजर भूमि को लागू होंगे और जो एतद्पश्चात् पूर्वोक्त अधिनियम की धारा 29 की उपधारा (2) के उपबन्धों के अधीन ''संरक्षित वन'' कहलाएगी।

अनुसूची

क्रम संख्या	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन में परिवर्तित किया जाना अपेक्षित है	हदबस्त नम्बर सहित मुहाल का नाम	खसरा नम्बर	क्षेत्र हैक्टेयर में	मुख्य सीमाएं महाल / उप महाल	वन परिक्षेत्र	वन मण्डल	जिला
1.	1 / 2010	पनिहाणा	पनिहाणा	526, 528, 529 कित्ता– 3	11–19–72	उत्तरः मजरूआ रकबा पनिहाणा दक्षिणः करोड़ी पूर्वः पनिहाणा पश्चिमः पनिहाणा	हलोग धामी	शिमला	शिमला

आदेश द्वारा,
तरूण कपूर,
अतिरिक्त मुख्य सचिव (वन)।

————————

[*Authoritative English Text of this Department Notification No.FFE-B-F(14)-138/2014, dated 2nd February, 2018 as required under Article 348 (3) of the Constitution of India*] .

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, *the* 2nd *February,* 2018

No. FFE-B-F(14)-138/2014.—Whereas the nature and extent of the rights of the Government and of private persons in or over the Forest Land/ Waste Land specified in the schedule inserted to this Notification have been enquired into and recorded as required under Sub-Section (3) of Section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

And whereas the Forest Land/ Waste Land shown in the said schedule is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the Forest Produce therein;

Now, therefore, in exercise of the powers conferred by Sub- Section (1) of Section-29 of the Act *ibid,* the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the Act shall apply to the said Forest Land/ Waste Land and shall hereafter be called as "Protected Forests" under the provisions of Sub-Section (2) of Section-29 of the Act *ibid.*

SCHEDULE

Sr. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal with Hadbast No.	Khasra No.	Area in Hectare	Cardinal Boundaries Muhal/Up Muhal	Forest Range	Forest Division	District
1.	1/2010	Panihana	Panihana	526, 528, 529 Kitta 3	11-19-72	North: Cultivated Area Panihana South: Karodi East: Panihana West: Panihana	Halog Dhami	Shimla	Shimla

By order,
TARUN KAPOOR,
Additional Chief Secretary (Forests).

वन विभाग

अधिसूचना

शिमला–2, 2 फरवरी, 2018

संख्याः एफ.एफ.ई.–बी–एफ(14)139 / 2014.––इस अधिसूचना में अन्तःस्थापित अनुसूची में विनिर्दिष्ट वन भूमि / बंजर भूमि में या उस पर, सरकार तथा प्राईवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की जांच कर ली गई है और उन्हें भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उपधारा (3) के अधीन यथा अपेक्षित अभिलिखित कर लिया है;

उक्त अनुसूची में दर्शित वन भूमि / बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा 29 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय–4 के उपबन्ध उक्त वन भूमि / बंजर भूमि को लागू होंगे और जो एतद्पश्चात् पूर्वोक्त अधिनियम की धारा 29 की उपधारा (2) के उपबन्धों के अधीन ''संरक्षित वन'' कहलाएगी।

अनुसूची

क्रम संख्या	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन में परिवर्तित किया जाना अपेक्षित है	हदबस्त नम्बर सहित मुहाल का नाम	खसरा नम्बर	क्षेत्र हैक्टेयर में	मुख्य सीमाएं महाल / उप महाल	वन परिक्षेत्र	वन मण्डल	जिला
1.	7 / 2010	ओखरू मन्देया– I	केहरू मन्देया	174, 175, 176, 180 235 कित्ता 5	5–71–17	उत्तरः केहरू दक्षिणः मन्देया पूर्वः मन्देया पश्चिमः कटियाणा	हलोग धामी	शिमला	शिमला

आदेश द्वारा,
तरूण कपूर,
अतिरिक्त मुख्य सचिव (वन)।

———————

[*Authoritative English Text of this Department Notification No.FFE-B-F(14)-139/2014, dated 2nd February, 2018 as required under Article 348 (3) of the Constitution of India*] .

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, the 2nd February, 2018

No. FFE-B-F(14)-139/2014.—Whereas the nature and extent of the rights of the Government and of private persons in or over the Forest Land/ Waste Land specified in the schedule inserted to this Notification have been enquired into and recorded as required under Sub-Section (3) of Section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

And whereas the Forest Land/Waste Land shown in the said schedule is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the Forest Produce therein;

Now, therefore, in exercise of the powers conferred by Sub- Section (1) of Section-29 of the Act ibid, the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the Act shall apply to the said Forest Land/ Waste Land and shall hereafter be called as "Protected Forests" under the provisions of Sub-Section (2) of Section-29 of the Act *ibid.*

SCHEDULE

Sl. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal with Hadbast No.	Khasra No.	Area in Hectare	Cardinal Boundaries Muhal/ Up Muhal	Forest Range	Forest Division	District
1.	7/2010	Okharu Mandeya-I	Kehru Mandeya	174, 175, 176, 180 235 Kitta 5	5-71-17	North: Keharu South: Mandeya East: Mandeya West: Katiyana	Halog Dhami	Shimla	Shimla

By order,
TARUN KAPOOR,
Additional Chief Secretary (Forests).

वन विभाग

अधिसूचना

शिमला–2, 2 फरवरी, 2018

संख्याः एफ.एफ.ई.–बी–एफ (14)140 / 2014.––इस अधिसूचना में अन्तःस्थापित अनुसूची में विनिर्दिष्ट वन भूमि / बंजर भूमि में या उस पर, सरकार तथा प्राईवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की जांच कर ली गई है और उन्हें भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उपधारा (3) के अधीन यथा अपेक्षित अभिलिखित कर लिया है;

उक्त अनुसूची में दर्शित वन भूमि / बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा 29 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय–4 के उपबन्ध उक्त वन भूमि / बंजर भूमि को लागू होंगे और जो एतद्पश्चात् पूर्वोक्त अधिनियम की धारा 29 की उपधारा (2) के उपबन्धों के अधीन ''संरक्षित वन'' कहलाएगी।

अनुसूची

क्रम संख्या	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन में परिवर्तित किया जाना अपेक्षित है	हदबस्त नम्बर सहित मुहाल का नाम	खसरा नम्बर	क्षेत्र हैक्टेयर में	मुख्य सीमाएं महाल / उप महाल	वन परिक्षेत्र	वन मण्डल	जिला
1.	8 / 2010	हलोग	हलोग	368, 369 कित्ता 2	13–61–46	उत्तरः हलोग दक्षिणः अरलोट पूर्वः मजरूआ रकबा हलोग पश्चिमः मजरूआ रकबा हलोग	हलोग धामी	शिमला	शिमला

आदेश द्वारा
तरूण कपूर,
अतिरिक्त मुख्य सचिव (वन)।

———————

[*Authoritative English Text of this Department Notification No.FFE-B-F(14)-140/2014, dated 2nd February, 2018 as required under Article 348 (3) of the Constitution of India*] .

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, *the 2nd February,* 2018

No. FFE-B-F(14)-140/2014.—Whereas the nature and extent of the rights of the Government and of private persons in or over the Forest Land/ Waste Land specified in the schedule inserted to this Notification have been enquired into and recorded as required under Sub-Section (3) of Section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

And whereas the Forest Land/ Waste Land shown in the said schedule is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the Forest Produce therein;

Now, therefore, in exercise of the powers conferred by Sub- Section (1) of Section-29 of the Act *ibid,* the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the Act shall apply to the said Forest Land/ Waste Land and shall hereafter be called as "Protected Forests" under the provisions of Sub-Section (2) of Section-29 of the Act *ibid.*

SCHEDULE

Sl. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal with Hadbast No.	Khasra No.	Area in Hectare	Cardinal Boundaries Muhal/ Up Muhal	Forest Range	Forest Division	District
1.	8/2010	Halog	Halog	368, 369 Kitta 2	13-61-46	North: Halog South: Arlot East: Cultivated Area Halog West: Cultivated Area Halog	Halog Dhami	Shimla	Shimla

By order,
TARUN KAPOOR,
Additional Chief Secretary (Forests).

वन विभाग

अधिसूचना

शिमला–2, 1 फरवरी, 2018

संख्याः एफ.एफ.ई.–बी–एफ(14) 141 / 2014.––इस अधिसूचना में अन्तःस्थापित अनुसूची में विनिर्दिष्ट वन भूमि / बंजर भूमि में या उस पर, सरकार तथा प्राईवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की जांच कर ली गई है और उन्हें भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उपधारा (3) के अधीन यथा अपेक्षित अभिलिखित कर लिया है;

उक्त अनुसूची में दर्शित वन भूमि / बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा 29 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय–4 के उपबन्ध उक्त वन भूमि / बंजर भूमि को लागू होंगे और जो एतद्पश्चात् पूर्वोक्त अधिनियम की धारा 29 की उपधारा (2) के उपबन्धों के अधीन ''संरक्षित वन'' कहलाएगी।

अनुसूची

क्रम संख्या	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन में परिवर्तित किया जाना अपेक्षित है	हदबस्त नम्बर सहित मुहाल का नाम	खसरा नम्बर	क्षेत्र हैक्टेयर में	मुख्य सीमाएं महाल / उप महाल	वन परिक्षेत्र	वन मण्डल	जिला
1.	9 / 2010	नयावग	नयावग	360, 362, 601, 613, 614 कित्ता–5	10–04–33	उत्तरः मजरूआ रकबा नयावग दक्षिणः जंगल सनोग पूर्वः लोहारव पश्चिमः मजरूआ रकबा नयावग	हलोग धामी	शिमला	शिमला

आदेश द्वारा
तरूण कपूर,
अतिरिक्त मुख्य सचिव (वन)।

[*Authoritative English Text of this Department Notification No.FFE-B-F(14)-141/2014, dated 1st February, 2018 as required under Article 348 (3) of the Constitution of India*] .

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, *the* 1st *February,* 2018

No. FFE-B-F(14)-141/2014.—Whereas the nature and extent of the rights of the Government and of private persons in or over the Forest Land/Waste Land specified in the schedule inserted to this Notification have been enquired into and recorded as required under Sub-Section (3) of Section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

And whereas the Forest Land/ Waste Land shown in the said schedule is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the Forest Produce therein;

Now, therefore, in exercise of the powers conferred by Sub-Section (1) of Section-29 of the Act *ibid*, the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the Act shall apply to the said Forest Land/ Waste Land and shall hereafter be called as "Protected Forests" under the provisions of Sub-Section (2) of Section-29 of the Act *ibid.*

SCHEDULE

Sl. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal with Hadbast No.	Khasra No.	Area in Hectare	Cardinal Boundaries Muhal/ Up Muhal	Forest Range	Forest Division	District
1.	9/2010	Nayavag	Nayavag	360, 362, 601, 613, 614 Kitta: 5	10-04-33	North: Cultivated Area Nayavag South: Forest Sanog East: Loharav West: Cultivated Area Nayavag	Halog Dhami	Shimla	Shimla

By order,
TARUN KAPOOR,
Additional Chief Secretary (Forests).

वन विभाग

अधिसूचना

शिमला–2, 1 फरवरी, 2018

संख्याः एफ.एफ.ई.–बी–एफ(14) 142 / 2014.—इस अधिसूचना में अन्तःस्थापित अनुसूची में विनिर्दिष्ट वन भूमि / बंजर भूमि में या उस पर, सरकार तथा प्राईवेट व्यक्तियों के अधिकारों के स्वरूप और विस्तार की

जांच कर ली गई है और उन्हें भारतीय वन अधिनियम, 1927 (1927 का अधिनियम संख्यांक 16) की धारा 29 की उपधारा (3) के अधीन यथा अपेक्षित अभिलिखित कर लिया है;

उक्त अनुसूची में दर्शित वन भूमि / बंजर भूमि, सरकार की सम्पत्ति है, या जिस पर सरकार के सांपत्तिक अधिकार हैं या सरकार उसकी वन उपज के सम्पूर्ण या किसी भाग की हकदार है;

अतः हिमाचल प्रदेश के राज्यपाल, पूर्वोक्त अधिनियम की धारा 29 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करते हैं कि उक्त अधिनियम के अध्याय–4 के उपबन्ध उक्त वन भूमि / बंजर भूमि को लागू होंगे और जो एतद्पश्चात् पूर्वोक्त अधिनियम की धारा 29 की उपधारा (2) के उपबन्धों के अधीन ''संरक्षित वन'' कहलाएगी।

अनुसूची

क्रम संख्या	नस्ति संख्या	वन का नाम जिसे सीमांकित संरक्षित वन में परिवर्तित किया जाना अपेक्षित है	हदबस्त नम्बर सहित मुहाल का नाम	खसरा नम्बर	क्षेत्र हैक्टेयर में	मुख्य सीमाएं महाल / उप महाल	वन परिक्षेत्र	वन मण्डल	जिला
1.	10 / 2010	अरलोट	अरलोट	138 / 2, 159, 232, 233, 234 कित्ता 5	5–02–68	उत्तरः हलोग दक्षिणः पनोग पूर्वः अरलोट, बडयाण, कायन्ती पश्चिमः अरलोट	हलोग धामी	शिमला	शिमला

आदेश द्वारा,
तरूण कपूर,
अतिरिक्त मुख्य सचिव (वन)।

———————

[*Authoritative English Text of this Department Notification No.FFE-B-F(14)-142/2014 dated 1st February, 2018 as required under Article 348 (3) of the Constitution of India*].

FORESTS DEPARTMENT

NOTIFICATION

Shimla-2, *the* 1st *February,* 2018

No. FFE-B-F(14)-142/2014.—Whereas the nature and extent of the rights of the Government and of private persons in or over the Forest Land/Waste Land specified in the schedule inserted to this Notification have been enquired into and recorded as required under Sub-Section (3) of Section-29 of the Indian Forest Act, 1927 (Act No. 16 of 1927);

And whereas the Forest Land/ Waste Land shown in the said schedule is the property of the Government or over which the Government has proprietary rights or the Government is entitled to the whole or any part of the Forest Produce therein;

Now, therefore, in exercise of the powers conferred by Sub- Section (1) of Section-29 of the Act *ibid*, the Governor, Himachal Pradesh is pleased to declare that the provisions of Chapter-IV of the Act shall apply to the said Forest Land/ Waste Land and shall hereafter be called as "Protected Forests" under the provisions of Sub-Section (2) of Section-29 of the Act *ibid.*

SCHEDULE

Sl. No.	File No.	Name of Forest required to be converted into Demarcated Protected Forests	Name of Muhal with Hadbast No.	Khasra No.	Area in Hectare	Cardinal Boundaries Muhal/ Up Muhal	Forest Range	Forest Division	District
1.	10/2010	Arlot	Arlot	138/2, 159, 232, 233, 234 Kitta 5	5-02-68	North: Halog South: Panog East: Arlot, Badyan, Kaynti West: Arlot	Halog Dhami	Shimla	Shimla

By order,
TARUN KAPOOR,
Additional Chief Secretary (Forests).

प्ररूप–1

निर्वाचन की सूचना
(नियम–3 देखिए)

एतद्द्वारा सूचना दी जाती है कि :––

(1) हिमाचल प्रदेश विधान सभा के निर्वाचित सदस्यों द्वारा राज्यसभा के लिए सदस्य का निर्वाचन होना है;

(2) नाम निर्देशन–पत्र रिटर्निंग ऑफिसर [ए.डी.एम. (प्रोटोकॉल) शिमला] या सहायक रिटर्निंग ऑफिसर (अवर–सचिव, हि0 प्र0 विधान सभा) को अभ्यर्थी या उसके किसी प्रस्थापक द्वारा 12 मार्च, 2018 (सोमवार) से अपश्चात् (लोक अवकाश के दिन से भिन्न) किसी दिन 11.00 बजे पूर्वाह्न और 3.00 बजे अपराह्न के मध्य रिटर्निंग ऑफिसर (ए.डी.एम., प्रोटोकॉल) शिमला के कमरा नं0 ए–302 (प्रशासनिक भवन) हिमाचल प्रदेश विधान सभा, शिमला–171004, में परिदत्त किए जा सकेंगे;

(3) नाम निर्देशन–पत्र के प्ररूप पूर्वोक्त स्थान और समय पर अभिप्राप्त किए जा सकेंगे;

(4) नाम निर्देशन–पत्र संवीक्षा के लिए रिटर्निंग ऑफिसर द्वारा कमरा नं0 ए–302 (प्रशासनिक भवन) हिमाचल प्रदेश विधान सभा, शिमला–171004 में 13 मार्च, 2018 (मंगलवार) प्रातः 11.00 बजे लिए जाएंगे;

(5) अभ्यर्थिता वापस लेने की सूचना अभ्यर्थी या उसके प्रस्थापक या उसके निर्वाचन अभिकर्ता द्वारा (जो अभ्यर्थी द्वारा उसे परिदत्त करने के लिए लिखित में प्राधिकृत किया गया हो) ऊपर पैरा (2) में विनिर्दिष्ट ऑफिसरों में से किसी को उसके कार्यालय में 15 मार्च, 2018 (वीरवार) को 3.00 बजे अपराह्न से पूर्व परिदत्त की जा सकेगी;

(6) निर्वाचन लड़े जाने की दशा में 23 मार्च, 2018 (शुक्रवार) की प्रातः 9.00 बजे और अपराह्न 4.00 बजे के बीच मतदान होगा ।

रिटर्निंग ऑफिसर,
ए.डी.एम., प्रोटोकॉल, शिमला
हिमाचल प्रदेश से राज्य सभा
के द्विवार्षिक निर्वाचन के लिए ।

शिमला–171004
तारीख : 5 मार्च, 2018.

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Form-I

(*See* Rule-3)
Notice of Election

Notice is hereby given that:—

1. An Election is to be held of a Member to the Council of States by the elected members of the Himachal Pradesh Legislative Assembly;

2. Nomination papers may be delivered by a candidate or any of his proposer to the Returning Officer [A.D.M., (Protocol**)** Shimla] or Assistant Returning Officer (Under Secretary, Himachal Pradesh Vidhan Sabha) in room No. A-302, Himachal Pradesh Vidhan Sabha (Administrative Block), Shimla-171004, between 11.00 A.M. and 3.00 P.M. on any day (other than public holiday) not later than the 12th March, 2018 (Monday).

3. Forms of nomination paper may be obtained at the place and times aforesaid;

4. Nomination papers will be taken up for scrutiny at 11.00 A.M. on 13th March, 2018 (Tuesday) at room No. A-302, Himachal Pradesh Vidhan Sabha (Administrative Block), Shimla-171004;

5. Notice of withdrawal of candidature may be delivered either by a candidate or his proposer or his election agent (who has been authorized in writing by the candidate to deliver it) to either of the officers specified in paragraph (2) above at his office before 3.00 P.M. on the 15th March, 2018 (Thursday);

6. In the event of the election being contested, the poll will be taken on the 23rd March, 2018 (Friday) between the hours 9.00 A.M. and 4.00 P.M.

Returning Officer,
(A.D.M. (Protocol) Shimla)
For Biennial Election to the Council of
States, Himachal Pradesh.

Shimla-171004
Dated: 5th March, 2018.

निर्वाचन विभाग

अधिसूचना

शिमला–171009, 05 मार्च, 2018

संख्याः 3–53 / 2017–ई0एल0एन0–369.––भारत सरकार, विधि और न्याय मन्त्रालय (विधायी विभाग) की अधिसूचना संख्या फा.सं. एच.11024 / 3 / 2018–वि.02 दिनांक 5 मार्च, 2018, जिसे लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 12 के अन्तर्गत राज्य सभा द्विवार्षिक निर्वाचन के सम्बन्ध में जारी किया गया है और भारत निर्वाचन आयोग की अधिसूचना सं0 318 / रा0स0–मल्टी / 2 / 2018(1) दिनांक 5 मार्च, 2018 तदानुसार फाल्गुन 14, 1939 (शक) जो उपरोक्त निर्वाचनों से सम्बन्धित है, को अंग्रेजी रूपान्तर सहित जनसाधारण की सूचना हेतु पुनः प्रकाशित किया जाता है।

आदेश से,
पुष्पेन्द्र राजपूत,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत सरकार
विधि और न्याय मंत्रालय
(विधायी विभाग)

नई दिल्ली, तारीख 5 मार्च, 2018
फाल्गुन 14, 1939 (शक)

अधिसूचना

का0आ0.....(अ)–राष्ट्रपति, लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 12 के अनुसरण में नीचे सारणी के स्तंभ (2) में विनिर्दिष्ट प्रत्येक राज्य की विधान सभा के निर्वाचित सदस्यों से, उक्त अधिनियम के उपबंधों और उसके अधीन बनाए गए नियमों और किए गए आदेशों के अनुसार, राज्य सभा के उन सदस्य (सदस्यों) के स्थान (स्थानों) को भरने के प्रयोजन के लिए, जिनकी पदावधि उक्त सारणी के स्तंभ (4) में तत्स्थानी प्रविष्टि में उल्लिखित तारीख को समाप्त होनी है, उनकी पदावधि के अवसान पर, उक्त सारणी के स्तंभ (3) में प्रत्येक राज्य के सामने विनिर्दिष्ट संख्या में सदस्य (सदस्यों) को निर्वाचित करने की अपेक्षा करते हैं :–

क्रम सं.	राज्य	भरे जाने वाले स्थानों की संख्या	निवृत्ति की तारीख
1	2	3	4
1.	आंध्र प्रदेश	3	02–04–2018
2.	बिहार	6	02–04–2018
3.	छत्तीसगढ़	1	02–04–2018
4.	गुजरात	4	02–04–2018
5.	हरियाणा	1	02–04–2018
6.	हिमाचल प्रदेश	1	02–04–2018
7.	कर्नाटक	4	02–04–2018
8.	मध्य प्रदेश	5	02–04–2018
9.	महाराष्ट्र	6	02–04–2018

10.	तेलंगाना	3	02–04–2018
11.	उत्तर प्रदेश	10	02–04–2018
12.	उत्तराखण्ड	1	02–04–2018
13.	पश्चिमी बंगाल	5	02–04–2018
14.	ओड़िशा	3	03–04–2018
15.	राजस्थान	3	03–04–2018
16.	झारखंड	2	03–05–2018

(फा.सं.एच.11024 / 3 / 2018–वि.02

(डॉ. रीटा वशिष्ट)
अपर सचिव,
भारत सरकार।

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GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
(LEGISLATIVE DEPARTMENT)

New Delhi, the 5th March, 2018
Phalguna 14, 1939 (*Saka*)

NOTIFICATION

S.O……(E).—In pursuance of section 12 of the Representation of the People Act, 1951 (43 of 1951), the President is pleased to call upon the elected members of the Legislative Assembly of each State specified in column (2) of the table below, to elect, in accordance with the provisions of the said Act and of the rules and orders made thereunder, the numbers of member(s) specified against each State in column (3) of the said table, for the purpose of filling the seat(s) of member(s) of the Council of States whose term of office is due to expire on the date mentioned in the corresponding entry in column (4) of the said table, on the expiration of their term of office :—

S. No.	State	No. of seats to be filled	Date of Retirement
1	**2**	**3**	**4**
1.	Andhra Pradesh	3	02-04-2018
2.	Bihar	6	02-04-2018
3.	Chhattisgarh	1	02-04-2018
4.	Gujrat	4	02-04-2018
5.	Haryana	1	02-04-2018
6.	Himachal Pradesh	1	02-04-2018
7.	Karnataka	4	02-04-2018
8.	Madhya Pradesh	5	02-04-2018
9.	Maharashtra	6	02-04-2018
10.	Telangana	3	02-04-2018
11.	Uttar Pradesh	10	02-04-2018
12.	Uttarakhand	1	02-04-2018
13.	West Bengal	5	02-04-2018

14.	Odisha	3	03-04-2018
15.	Rajasthan	3	03-04-2018
16.	Jharkhand	2	03-05-2018

[F.No.H.11024/3/2018-Leg.II]

(Dr. REETA VASISHTA),
Additional Secretary to the Government of India.

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली–110001

दिनांक : 5 मार्च, 2018
फाल्गुन 14, 1939 (शक)

अधिसूचना

सं0 318 / रा. स.–मल्टी / 2 / 2018(1).––यतः, भारत के राष्ट्रपति ने लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 12 के अधीन जारी और तारीख 5 मार्च, 2018 को भारत के राजपत्र में प्रकाशित अधिसूचना द्वारा नीचे की सारणी के स्तम्भ (1) में विनिर्दिष्ट राज्यों की विधान सभा के प्रत्येक निर्वाचित सदस्य से यह अपेक्षा की है कि वे उक्त सारणी के स्तम्भ (2) में राज्यों के सामने विनिर्दिष्ट संख्या में सदस्य निर्वाचित कर दें:––

सारणी

राज्य	भरे जाने वाले स्थान
1	2
आंध्र प्रदेश	3
बिहार	6
छत्तीसगढ़	1
गुजरात	4
हरियाणा	1
हिमाचल प्रदेश	1
कर्नाटक	4
मध्य प्रदेश	5
महाराष्ट्र	6
तेलंगाना	3
उत्तर प्रदेश	10
उत्तराखण्ड	1
पश्चिम बंगाल	5
ओड़िशा	3
राजस्थान	3
झारखण्ड	2
कुल–58	

अतः, अब उक्त अधिनियम की धारा 39 की उप–धारा (1) और धारा 56 के अनुसरण में भारत निर्वाचन आयोग एतद्द्वाराः––

(अ) उक्त निर्वाचन के संबंध में निम्नलिखित निर्धारित करता हैः–

(क) नाम निर्देशित करने की अन्तिम तारीख . .12 मार्च, 2018 (सोमवार)

(ख) नाम निर्देशनों की संवीक्षा की तारीख . .13 मार्च, 2018 (मंगलवार)

(ग) अभ्यर्थिताएं वापस लेने की अंतिम तारीख . .15 मार्च, 2018 (गुरूवार)

(घ) वह तारीख, जिसको यदि आवश्यक हुआ तो मतदान होगा, . .23 मार्च, 2018 (शुक्रवार)

(ङ) वह तारीख जिससे पूर्व निर्वाचन सम्पन्न करा लिया जाएगा . .26 मार्च, 2018 (सोमवार) और

(आ) 9.00 बजे पूर्वाहन् से 4.00 बजे अपराह्न तक का समय, ऐसे समय के रूप में नियत करता है जिसके दौरान यदि आवश्यक हुआ तो, उक्त विनिर्दिष्ट तारीख को, मतदान होगा ।

आदेश से,
आर.के. श्रीवास्तव,
वरिष्ठ प्रधान सचिव
भारत निर्वाचन आयोग।

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ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 5th March, 2018
Phalguna 14, 1939 (*Saka*)

NOTIFICATION

No. 318/CS-Multi/2/2018(1).—Whereas, the President of India has, by notification issued under Section 12 of the Representation of the People Act, 1951 (43 of 1951) and published in the Gazette of India on **5th March, 2018** been pleased to call upon the elected members of each of the Legislative Assemblies of the States, specified in column (1) of the TABLE below, to elect to the Council of States, the number of members specified against that State in column (2) of the said TABLE:

TABLE

Sl. No.	Name of State	No. of members retiring
1	**2**	**3**
1.	Andhra Pradesh	3
2.	Bihar	6
3.	Chhattisgarh	1
4.	Gujarat	4

5.	Haryana	1
6.	Himachal Pradesh	1
7.	Karnataka	4
8.	Madhya Pradesh	5
9.	Maharashtra	6
10.	Telangana	3
11.	Uttar Pradesh	10
12.	Uttarakhand	1
13.	West Bengal	5
14.	Odisha	3
15.	Rajasthan	3
16.	Jharkhand	2
	Total . .	**58**

Now, therefore, in pursuance of sub-section (1) of section 39 and section 56 of the said Act, the Election Commission of India hereby –

(A) appoints, with respect to the said election;

(a) the 12th March, 2018 (Monday), as the last date for making nominations;

(b) the 13th March, 2018 (Tuesday), as the date for the scrutiny of the nominations;

(c) the 15th March, 2018 (Thursday), as the last date for the withdrawal of candidatures;

(d) the **23rd March, 2018 (Friday),** as the date on which a poll shall, if necessary, be taken; and

(e) the 26th March, 2018 (Monday), as the date before which the election shall be completed; and

(B) fixes the hours from **9:00 A.M. to 4:00 P.M.,** as the hours during which the poll shall, if necessary, be taken in all the above mentioned States, on the date specified above for the election.

By order,
(R. K. SRIVASTAVA),
Senior Principal Secretary to the
Election Commission of India.

In the Court of Shri Niraj Chandla (H.P.A.S), Sub-Divisional Magistrate, Shimla (Urban), District Shimla, Himachal Pradesh

Sh. Jagmohan Butail s/o Shri Sushil Kumar, r/o 20 Shubham Cottage, Sanjauli, Sanjauli-6, Shimla, Tehsil and District Shimla, H.P. ..*Applicant.*

Versus

General Public .. *Respondent.*

Application under Section 13(3) of Birth and Death Registration Act, 1969.

Whereas Shri Jagmohan Butail s/o Shri Sushil Kumar, r/o 20 Shubham Cottage, Sanjauli, Sanjauli-6, Shimla, Tehsil and District Shimla, H.P. has preferred an application to the undersigned for registration his son namely SACHIT BUTAIL DOB (10-02-1978) at above address in the record of Municipal Corporation Shimla.

Therefore, this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 29-03-2018 failing which no objection will be entertained after expiry of date and will be decided according.

Given under my hand and seal of the Court on this 28th day of February, 2018.

Seal.

NIRAJ CHANDLA (HPAS),
Sub-Divisional Magistrate,
Shimla (Urban) District Shimla.

In the Court of Shri Chander Mohan Thakur, Executive Magistrate (Naib-Tehsildar) Solan, District Solan, H. P.

In the matter of :

Sh. Om Raj Sharma s/o Sh. Nand Lal Sharma, r/o Village Nagali, P.O. Barog Railway Station, Tehsil & District Solan, Himachal Pradesh . .*Applicant.*

Versus

General Public . .*Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Sh. Om Raj Sharma s/o Sh. Nand Lal Sharma, r/o Village Nagali, P.O. Barog Railway Station, Tehsil & District Solan, Himachal Pradesh has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 alongwith affidavit and other documents for enter the date of birth of his son named as Himanshu Sharma who was born on 26-12-1996 at Village Nagali, Tehsil & District Solan, Himachal Pradesh but his date of birth could not be entered in the record of Gram Panchayat Anji, Tehsil & District Solan.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for delayed registration date of birth of Sh. Himanshu may submit their objection in writing or appear in person in this court on or before 27-03-2018 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 28th day of February, 2018.

Seal.

CHANDER MOHAN THAKUR,
Executive Magistrate (Naib-Tehsildar),
Solan, District Solan, H. P.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है